

CONSERVATORSHIP: APPOINTMENT AND POWERS OF CONSERVATOR

[REVISED 2010]



**ADMINISTRATIVE OFFICE
OF THE COURTS**

EDUCATION DIVISION/CENTER FOR
JUDICIAL EDUCATION AND RESEARCH

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CONTRIBUTING AUTHOR/EDITOR

Alan Carlton, Attorney

CJER PROJECT STAFF

Robert Schindewolf
Managing Attorney
Barry Harding
Senior Attorney
Iris Okura
Senior Editor

BENCHGUIDE CONSULTANTS

Hon. Eddie C. Sturgeon
Superior Court of California, County of San Diego
Hon. Marshall Ivan Whitley
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Ms. Gina Klee
Managing Probate Attorney
Superior Court of California, County of Fresno

Editorial comments and inquiries: Robert Schindewolf, Managing Attorney 415-865-7798
fax 415-865-4335

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This benchguide discusses appointment of a conservator of the person and the estate, including temporary and successor conservators. It also discusses powers and authority of the conservator that may be applicable or authorized during the appointment process, including capacity to bind the estate, choose the residence, and consent for medical treatment. Management of estate, support of the conservatee, periodic review, accounts, compensation, and termination of conservatorships are discussed in California Judges Benchguide 301: *Conservatorship Proceedings* (Cal CJER).

II. PROCEDURAL CHECKLISTS: ESTABLISHMENT OF CONSERVATORSHIP

A. [§300.2] Hearing Preparation

(1) *Determine whether conservatorship of a person, of an estate, or of both is being sought.* See Petition for Appointment of Probate Conservator, Judicial Council Form GC-310, 1; §§300.4–300.6.

(2) *Determine whether proper notice of the hearing has been given.* Prob C §1822; see Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020; §§300.21–300.22. If petitioner is not proposed conservatee, determine whether proposed conservatee has been served with citation to appear. Prob C §1823; §300.22.

(3) *Determine whether jurisdiction and venue are correct.* Prob C §§2200, 2201. Is the proposed conservatee alleged to be a resident of the county in which the action is filed or are sufficient facts alleged to show that it is in the best interests of the proposed conservatee to have the conservatorship in this county? See Judicial Council Form GC-310, 3(a); §300.11. If the proposed conservatee is a nonresident, see §300.11.

(4) *Determine status of proposed conservator; whether nominee, spouse, domestic partner, relative, private professional conservator, bank, or trust company.* See Confidential Conservator Screening Form, Judicial Council Form GC-310, 3(c); §§300.29–300.32.

(5) *Determine whether Confidential Conservator Screening Form has been filed.* Judicial Council Form GC-314. Determine whether proposed conservator should not be appointed because of his or her prior crimes or misconduct.

(6) *If proposed conservator is private professional conservator, determine whether it has a valid, unexpired, unsuspended license as a professional fiduciary under Bus & P C §§6500 et seq; is exempt from the definition of “professional fiduciary” under Bus & P C §6501; or is exempt from the licensing requirements of Bus & P C §6530; Prob C §2340; §300.31; see Judicial Council Form GC-314.* Examine the fiduciary’s file with the Professional Fiduciary Bureau to determine whether there is any reason that the proposed conservator should not be appointed.

(7) *Determine status of petitioner; whether proposed conservator, nominee, spouse, domestic partner, relative, etc.* See Judicial Council Form GC-310, 3(d); §300.13. Determine whether petitioner is creditor or debtor of proposed conservatee. See Judicial Council Form GC-310, 3(b) Creditor of proposed conservatee cannot be petitioner unless also a spouse, relative, or representative of a governmental entity. Prob C §1820(c); §300.13.

(8) *If proposed conservator is the spouse of proposed conservatee, determine whether the spouse is a party to any action or proceeding*

against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage. See Judicial Council Form GC-310, 6. If the spouse is a party to such an action, he or she may not be appointed conservator unless the court finds it is in the best interests of the proposed conservatee to do so. [Prob C §1813](#); [§300.30](#).

(9) *If proposed conservator is the registered domestic partner of proposed conservatee, determine whether the domestic partner has terminated or intends to terminate the domestic partnership.* See Judicial Council Form GC-310, 7. If the domestic partner has or intends to terminate, he or she may not be appointed conservator unless the court finds it is in the best interests of the proposed conservatee to do so. [Prob C §1813.1\(a\)](#); [§300.30](#).

(10) *Determine what special authority is being sought in the petition, independent powers ([Prob C §§2590\(a\), 2591](#) [no powers without court authorization, [Prob C §2590\(b\)](#)]; [§§300.76–300.81](#)), orders relating to capacity of proposed conservatee ([Prob C §§1873, 1901](#); [§§300.70–300.75](#)), or orders relating powers of proposed conservator ([Prob C §§2351–2358](#); [§§300.96–300.117](#)).* See Judicial Council Form GC-310, 6(a), (b), 7(a), (b).

(11) *Determine whether proposed conservator is requesting authority to give consent for medical treatment.* [Prob C §§1880 et seq, 2355](#); see Judicial Council Form GC-310, 6(g), (9). If so, the Capacity Declaration—Conservatorship Form, Judicial Council Form GC-335 must be filed or the reason for failure to file it must be explained. [§§300.82–300.89](#).

(12) *Determine whether orders relating to the proposed conservatee’s dementia are being sought.* [Prob C §2356.5](#); see Judicial Council Form GC-310, 1(k); [§§300.90–300.95](#). If so, Judicial Council Form GC-313, Attachment Requesting Special Orders Regarding Dementia must be attached to the petition. This attachment requires that Dementia Attachment to Capacity Declaration—Conservatorship, Judicial Council Form 335, also be filed. See Forms GC-335, 335A.

(13) *Determine whether any other orders are being sought.* See Judicial Council Form, GC-310, 1(d)–(i).

(14) *Determine the character and value of the proposed conservatee’s estate.* See Judicial Council Form GC-310, 3(e).

(15) *Determine amount of bond, including a reasonable amount for the cost of recovery and whether amount of bond will be reduced by ordering blocked accounts.* [Prob C §§2320, 2328](#); [§300.50](#).

(16) *Determine whether proposed conservatee will attend hearing.* See Judicial Council Form GC-310, 8. If the proposed conservatee is unable to attend the hearing because of medical inability, a Capacity Declaration—Conservatorship Form GC-335 must be filed. The court can order that the proposed conservator need not attend the hearing if the in-

investigator reports that the proposed conservatee does not want to attend and does not contest the appointment. [Prob C §1825\(a\)](#); see [§300.42](#).

(17) *Determine whether proposed conservatee is on leave from a state mental health institution, is or is not receiving veteran’s benefits, and is or is not competent to complete an affidavit of voter registration.* See Judicial Council Form GC-310, 4. Determine whether Director of Mental Health, the Director of Developmental Services, or Veteran’s Administration has been given notice. [§300.21](#).

(18) *Determine whether court investigation is complete and report has been received.* [Prob C §1826](#); [§300.27](#).

(19) *Determine whether proposed conservatee is represented by counsel, and if not, determine whether counsel should be appointed.* [Prob C §§1470 et seq](#); [§300.28](#).

B. [[§300.3](#)] Hearing

(1) *Commissioners or attorneys serving as temporary judges should obtain a stipulation from the parties.* [Cal Rules of Ct 2.831](#).

(2) *Determine whether proposed conservatee is present and is represented by counsel.* If not represented by counsel, determine whether hearing should be postponed to allow conservatee to obtain counsel or whether counsel should be appointed. [§300.28](#).

(3) *Inform the proposed conservatee of his or her rights at the hearing.* See Spoken Form [§300.139](#).

(4) *Determine whether proposed conservatee is contesting the appointment or whether any other party has appeared to contest the appointment.*

(5) *If the appointment is contested, determine whether the proposed conservatee is demanding a jury trial.* If a jury trial is demanded, follow procedures to set for jury trial.

(6) *If jury trial is not demanded but hearing is contested:*

- Determine what witnesses will be called.
- Administer oath to all witnesses.
- Take testimony as to proposed conservatee’s competence.

(7) *If conservatorship of person is sought, determine whether proposed conservatee can or cannot care properly provide for his or her own daily personal needs for such basics as food, clothing, health care, and shelter.* [Prob C §1801\(a\)](#). Use statutory standards of [Prob C §§810 et seq](#); see [§§300.34–300.38](#).

(8) *If conservatorship of estate is sought, determine if proposed conservatee is substantially unable to manage his or her own financial resources or who may be a prey to fraud or unable to resist undue*

influence. [Prob C §1801\(b\)](#). Use statutory standards of [Prob C §§810 et seq](#); see [§§300.34–300.38](#).

(9) *If you find that a conservator of person, estate, or both is appropriate, determine whether the proposed conservatee or any of the witnesses have an objection to the proposed conservator.*

(10) *Determine whether proposed conservator is qualified.* Review Confidential Conservator Screening Form GC-314, and if a professional fiduciary is seeking appointment, review its file with the Professional Fiduciaries Bureau.

(11) *Appoint conservator of person, estate, or both.*

(12) *Determine whether the court orders sought in the petition should be granted.*

(13) *Review proposed court order form, Judicial Council Form GC-340, to ensure that it reflects the decision and orders you made.*

III. APPLICABLE LAW

A. Types of Conservatorships

1. [\[§300.4\]](#) Of the Person

A conservator of the person may be appointed for an adult who cannot care properly for his or her own daily personal needs for such basics as food, clothing, health care, and shelter. [Prob C §1801\(a\)](#). Although generally guardianships, rather than conservatorships, are used for minors (see [Prob C §§1500 et seq](#)), the court may appoint a conservator for a minor who has been married even if the marriage has been dissolved. [Prob C §1800.3\(a\)\(2\)](#).

But no conservatorship of the person or estate may be granted without an express finding that the conservatorship is the least restrictive alternative needed for the protection of the conservatee. [Prob C §1800.3\(b\)](#).

2. [\[§300.5\]](#) Of the Estate

A conservator may be appointed for the estate of an adult who is substantially unable to manage his or her own financial resources or who may be a prey to fraud or unable to resist undue influence. Substantial inability to manage finances may not be proven by isolated incidents of negligence or poor judgment. [Prob C §1801\(b\)](#).

3. [\[§300.6\]](#) Of Both

For prospective conservatees who have difficulties with both activities of daily living and with handling finances, the court may appoint a conservator of both the person and the estate of that person. [Prob C §1801\(c\)](#).

4. [§300.7] Conservator of Estate for Missing Person

A conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown. [Prob C §1804](#). Special provisions apply to the establishment of these conservatorships that are discussed in [§§300.130–300.134](#).

5. [§300.8] Conservator of Estate for Absentee

A conservator of the estate may be appointed for a person who is an absentee. [Prob C §1803](#). “Absentee” means either of the following ([Prob C §1403](#)):

- A member of a uniformed service covered by [37 USC chap 10](#), who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.
- An employee of the United States government or an agency thereof covered by [5 USC chap 55, subchap VII](#), who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

Special provisions apply to the establishment of these conservatorships that are discussed in [§§300.135–300.138](#).

6. [§300.9] Limited Conservatorships

Limited conservatorships are used for developmentally disabled adults. They may be of the person, estate, or both. [Prob C §1801\(d\)](#). “Developmental disability” means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. This term includes mental retardation, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but does not include other handicapping conditions that are solely physical in nature. [Prob C §1420](#).

A limited conservatorship may be used only as necessary to promote and protect the well-being of the individual, must be designed to encourage the development of maximum self-reliance and independence of the individual, and must be ordered only to the extent necessitated by the individual’s proven mental and adaptive limitations. The conservatee of the limited conservator is not be presumed to be incompetent and retains all legal and civil rights except those that by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. [Prob C §1801\(d\)](#).

7. [§300.10] LPS Conservatorships

A conservator of the person, the estate, or both may be appointed for anyone who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism and who is unwilling to accept or incapable of accepting voluntary treatment. [Welf & I C §5350](#). Grave disability must be found beyond a reasonable doubt. See *Conservatorship of Roulet* (1979) 23 C3d 219, 235, 152 CR 424. These conservatorships are known as LPS (Lanterman-Petris-Short Act) Conservatorships. [Welf & I C §§5000–5550](#). They result in involuntary commitment of the conservatee. [Welf & I C §5358](#).

LPS conservatorships are fully discussed in California Judges Bench-guide 120: LPS Proceedings (Cal CJER).

B. Initiating the Proceeding

1. [§300.11] Jurisdiction and Venue

Jurisdiction for conservatorships and guardianships is in the superior court. [Prob C §2200](#).

Venue, when the proposed conservatee is a California resident, is either in the county in which the proposed conservatee resides or a county for which the location would be in the best interest of the proposed conservatee. [Prob C §2201](#). This provision permits the court to determine that venue is proper, even though the place of residence is in dispute and avoids the need to litigate the issue of residence if the court determines that continuance of the proceeding in the county where filed is in the best interests of the conservatee. Cal L Rev Comment to [Prob C §2201](#) (1990).

When the proposed conservatee is not a California resident and the petition is for conservatorship of the person, venue may be in the county in which the proposed conservatee is temporarily living or one that may be in the best interest of the proposed conservatee. [Prob C §2202\(a\)](#). But if the petition is for conservatorship of the estate, venue may be in any of the following ([Prob C §2202\(b\)](#)):

- The county in which the proposed conservatee or ward is temporarily living;
- Any county in which the proposed conservatee or ward has property; or
- Any county that might be in the best interest of the proposed conservatee or ward.

The “best interests” provisions enables the court of the county where the property is located to determine that venue is proper with respect to the person as well as to the estate where a conservatorship of the person is necessary in California. Cal L Rev Comment to [Prob C §2202](#) (1990).

If proceedings for the conservatorship of the estate are commenced in more than one county, the conservatorship of the estate first granted, including a temporary conservatorship of the estate, governs and extends to all the property of the conservatee in California. The other proceeding must be dismissed. [Prob C §2203\(a\)](#).

If proceedings for the conservatorship of the person are commenced in more than one county, the conservatorship of the person first granted, including a temporary conservatorship of the person, governs. The other proceeding must be dismissed. [Prob C §2203\(b\)](#).

If a proceeding for the conservatorship of the person is commenced in one county and a proceeding for the conservatorship of the estate is commenced in a different county, the court first granting the conservatorship, whether of the person or of the estate, may find that it is in the best interests of the conservatee that the conservatorship of both the person and the estate be maintained in that county or in such other county as the court determines. Thereupon, the conservatorship proceeding in the court of the county found by the court to be in the best interests of the conservatee governs and extends to all property of the conservatee in California. The other proceeding must be dismissed. [Prob C §2203\(c\)](#).

2. [§300.12] Change of Venue

The court in which a guardianship or conservatorship proceeding is pending may petition for transfer of the proceeding to another county within this state. [Prob C §2211](#).

The petition for transfer may be filed only by one or more of the following ([Prob C §§2210, 2212](#)):

- The conservator or proposed conservator.
- The conservatee or proposed conservatee.
- The spouse or domestic partner of the conservatee.
- A relative or friend of the conservatee.
- Any other interested person.

The petition for transfer must set forth all of the following ([Prob C §2213](#)):

- The county to which the proceeding is to be transferred.
- The name and address of the ward or conservatee.
- A brief description of the character, value, and location of the property of the ward or conservatee.
- The reasons for the transfer.
- The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward within the

second degree, or of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

- The name and address of the conservator if other than the petitioner.

Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#). In addition, the petitioner must mail a notice of the time and place of the hearing and a copy of the petition to all persons required to be listed in the petition at least 15 days before the date set for the hearing. [Prob C §2214](#).

The general form of notice of hearing that must be used is Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020.

Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition ([Prob C §2215\(a\)](#)):

- Any person required to be listed in the petition.
- Any creditor of the ward or conservatee or of the estate.
- Any other interested person.

If the court determines that the transfer requested in the petition will be in the best interests of the conservatee, it must make an order transferring the proceeding to the other county. [Prob C §2215\(b\)\(1\)](#).

In those cases in which the court has approved a change of residence of the conservatee, it is presumed to be in the best interests of the conservatee to transfer the proceedings if the conservatee has moved his or her residence to another county within the state in which any spouse, registered domestic partner, or relative in the second degree also resides. The presumption that the transfer is in the best interests of the ward or conservatee, may be rebutted by clear and convincing evidence that the transfer will harm the conservatee. [Prob C §2215\(b\)\(2\)](#).

3. [§300.13] Who May Initiate

Conservatorship proceedings are initiated by the filing of a petition by any of the following ([Prob C §1820\(a\)](#)):

- The proposed conservatee.
- The spouse or domestic partner of the proposed conservatee. "Domestic partner" means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to [Fam C §297](#), provided that the domestic partnership has not been terminated. [Prob C §37\(a\)](#).
- A relative of the proposed conservatee.

- An interested state or local entity or agency or an officer or employee of such an entity or agency.
- Any other interested person or friend of the proposed conservatee. “Interested person” includes, but is not limited to:
 - Any interested state, local, or federal entity or agency.
 - Any interested public officer or employee of this state or of a local public entity of this state or of the federal government.

The proceedings may not be initiated by a creditor of the proposed conservatee, unless that person is also a spouse, relative, or representative of a governmental entity. [Prob C §1820\(c\)](#).

4. [§300.14] Contents of Petition

In the petition, the petitioner must ([Prob C §1821\(a\)](#)):

- State the reasons that the conservatorship is being sought.
- Request that a conservator be appointed.
- Specify the name, address, and telephone number of the proposed conservator and conservatee.

The petition must set forth, so far as they are known to the petitioner, the names and addresses of the spouse or registered domestic partner, and of the relatives of the proposed conservatee within the second degree. [Prob C §1821\(b\)](#). If no spouse or registered domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition must set forth, so far as they are known to the petitioner, the names and addresses of the following persons who are all deemed to be relatives ([Prob C §1821\(b\)](#)):

- A spouse or registered domestic partner of a predeceased parent of a proposed conservatee.
- The children of a predeceased spouse or registered domestic partner of a proposed conservatee.
- The siblings of the proposed conservatee’s parents, if any; but if none, then the natural and adoptive children of the proposed conservatee’s parents’ siblings.
- The natural and adoptive children of the proposed conservatee’s siblings.

If the petition is filed by a person other than the proposed conservatee, the petition must include a declaration of due diligence showing both of the following ([Prob C §1821\(d\)](#)):

- Either the efforts to find the proposed conservatee’s relatives or why it was not feasible to contact any of them.

- Either the preferences of the proposed conservatee concerning the appointment of a conservator and the appointment of the proposed conservator or why it was not feasible to ascertain those preferences.

Unless the petition for appointment of a temporary conservator is filed together with a petition for appointment of a conservator, if the petitioner is licensed under the Professional Fiduciaries Act ([Bus & P C §§6500 et seq](#)), the petition must include both of the following ([Prob C §1821\(c\)](#)):

- A statement of the petitioner's license information.
- A statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

Other petition requirements with respect to specific situations, i.e., conservator is debtor or creditor of conservatee, conservator is receiving veteran's benefits, conservatee is a patient or on leave from a mental institution, and specific requirements if the proposed conservatee is developmentally disabled, are set forth in [Prob C §1821\(e\)–\(j\)](#).

The petition must be filed using Petition for Appointment of Probate Conservator, Judicial Council Form GC-310.

5. [§300.15] Orders Sought in Petition

The petition may include an application for any order or orders authorized by statute including ([Prob C §1821\(h\)](#)):

- Orders for independent powers ([Prob C §§2590\(a\), 2591](#)); no powers without court authorization ([Prob C §2590\(b\)](#); [§§300.76–300.81](#)).
- Orders relating to the capacity of the conservatee to enter into transactions or to marry. [Prob C §§1873, 1901](#); [§§300.127–300.128](#).
- Orders with regard to the conservator's authority to bind the estate. [Prob C §§1870 et seq](#); [§§300.70–300.75](#).
- Orders relating to the powers and duties of the proposed conservator of the person. [Prob C §§2350 et seq](#); [§§300.96–300.117](#).
- An order determining that the conservatee lacks capacity to consent to medical treatment and giving that authority to the conservatee. [Prob C §2355](#); [§§300.102–300.108](#).

- Orders relating to dementia treatment or placement. [Prob C §2556.5](#); [§§300.90–300.95](#).
- A petition for instructions. [Prob C §2359](#); [§300.116](#).
- A petition for substituted judgment. [Prob C §2580](#); see Benchguide 301.
- A petition for authorization to make expenditures for the conservatee’s support. [Prob C §§2420 et seq](#); see Benchguide 301.
- Orders providing for the care and custody of the property of the conservatee. [Prob C §2402](#); see Benchguide 301.

6. [[§300.16](#)] Confidential Supplemental Information Form

In addition to the petition, the petitioner must file the form Confidential Supplemental Information, Judicial Council Form GC-312, which includes a brief statement of facts addressed to each of the following categories ([Prob C §1821\(a\)](#)):

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee’s residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The Confidential Supplement form need not be filed by a petitioner bank or other entity authorized to conduct the business of a trust company. [Prob C §1821\(a\)](#)

The supplemental information form is separate and distinct from the form for the petition. The supplemental information is confidential and must be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court must make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section. [Prob C §1821\(a\)](#).

7. [§300.17] Conservator's Screening Form

Each petitioner, other than a bank or other entity entitled to conduct the business of a trust company, must submit a completed Confidential Conservator Screening Form, Judicial Council Form GC-314 with the petition. [Cal Rules of Ct 7.1050](#). The form discloses information about the proposed conservator and his or her relationship to the proposed conservatee.

8. [§300.18] Attachment Requesting Special Orders Regarding Dementia

Petitioners who request:

- that a proposed conservatee with alleged dementia be placed in a secured perimeter residential care facility for the elderly under [Health & S C §1569.698](#), or
- that they be authorized to approve the administration of medications appropriate for the care and treatment of dementia,

must attach Judicial Council Form GC-313, Attachment Requesting Special Orders Regarding Dementia to the petition. [Prob C §2356.5](#).

This attachment requires that a medical declaration with a dementia attachment be filed. See Judicial Council Forms GC-335, GC-335A; [§300.20](#).

9. [§300.19] Physician's Capacity Declaration

If the proposed conservatee is unable to attend the hearing or if the petition seeks a determination that the proposed conservatee lacks the capacity to give medical consent or to place the proposed conservatee in a security facility for elderly based on dementia, the petition must be supported by a physician's, psychologist's or religious healing practitioner's capacity declaration. [Prob C §§1825\(b\), 1890\(c\)](#). The required form is Capacity Declaration Conservatorship, Judicial Council Form GC-335. If dementia orders are sought, the Dementia Attachment to Capacity Declaration, Judicial Council Form GC-335A, must be attached.

10. [§300.20] Order To Execute Capacity Declaration

If the capacity declaration or dementia attachment cannot be obtained without a court order, an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration may be obtained by using Judicial Council Forms GC-333, GC-334. See Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA, Judicial Council Form GC-333; and Ex Parte Order

Re Completion of Capacity Declaration—HIPAA, Judicial Council Form GC-334.

A physician may refuse to execute the capacity declaration because of the nondisclosure of medical information provisions of the [Health Insurance Portability and Accountability Act of 1996 \(42 USC §§1320d et seq\)](#) (HIPPA) and the [California Confidentiality of Medical Information Act \(CC §§56 et seq\)](#). The Acts generally prohibit the release of medical information by a medical provider without authorization from the patient. [42 USC §1320d-6](#); [CC §56.10\(a\)](#). An exception is provided, however, for probate investigators conducting an investigation in a conservatorship proceeding. [CC §56.10\(c\)\(12\)](#).

Consent to release can also be given by a person who has authority to act on behalf of the patient (conservator or agent under advanced health care directive). [45 CFR §164.502\(g\)](#); [CC §56.11\(c\)\(2\)](#).

If the patient or conservator cannot or will not authorize the release, there are exceptions for court-ordered disclosure. [45 CFR §164.512\(e\)\(1\)\(i\)](#); [CC §56.10\(b\)\(1\)](#). The ex parte order is used to authorize the physician to execute the capacity declaration.

C. Notice and Service

1. [\[§300.21\]](#) Required Notice

Notice of the time and place of the hearing on the petition for appointment of a conservator must be given as at least 15 days before the hearing. The notice must be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing. [Prob C §1822\(a\)](#). Notice must be given by Judicial Council Form GC-020.

Notice must be mailed to the following persons ([Prob C §1822\(b\)](#)):

- The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the address stated in the petition.
- The relatives named in the petition at their addresses stated in the petition.

Proof of service by mail is made by Attachment to Notice of Hearing Proof of Service by Mail, Judicial Council Form GC-020(MA).

Notice may also have to be given to the Director of Mental Health or the Director of Developmental Services ([Prob C §§1822\(c\), 1461](#)), the Office of the Veterans Administration ([Prob C §§1822\(d\), 1461.5](#)), and the regional centers for persons with developmental disabilities ([Prob C §§1822\(e\), 1827.5](#)) if the proposed conservatee is subject to their jurisdictions.

If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship

to the proposed conservatee, notice shall be mailed to the public guardian of the county in which the petition is filed. [Prob C §§1822\(f\)](#).

2. [§300.22] Service of Citation on Proposed Conservatee

If the petition is filed by a person other than the proposed conservatee, the clerk must issue a citation directed to the proposed conservatee setting forth the time and place of hearing. [Prob C §1823\(a\)](#). The required form is Citation for Conservatorship, Judicial Council Form GC-320.

The citation and a copy of the petition must be served on the proposed conservatee at least 15 days before the hearing. Service must be made in the manner provided in [CCP §§415.10](#) (personal service), [415.30](#) (service by mail with return receipt) or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in [CCP §415.40](#), first-class mail with return receipt. [Prob C §1824](#).

The required form is Proof of Personal Service of Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020(P).

3. [§300.23] General Notice Provisions

If notice of hearing is required but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing must be given at least 15 days before the day of the hearing. [Prob C §1460\(a\)](#). The general form of notice of hearing that must be used is Judicial Council Form GC-020.

The petitioner, who includes a person filing a petition, report, or account, must mail the notice of hearing to each of the following persons ([Prob C §1460\(b\)](#)):

- The conservator;
- The conservatee;
- The spouse of the conservatee, if the ward or conservatee has a spouse, or the registered domestic partner of the conservatee, if the conservatee has a registered domestic partner;
- Any person who has requested special notice of the matter, as provided in [Prob C §2700](#);
- For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to remove the guardian, the persons described in [Prob C §1510\(c\)](#); and
- For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in [Prob C §1821\(b\)](#).

The clerk of the court must cause the notice of the hearing to be posted as provided in [Prob C §1230](#) if the posting is required by [Prob C §2543\(c\)](#). [Prob C §1460\(c\)](#).

This provision does not excuse compliance with the requirements for notice to a person who has requested special notice pursuant to [Prob C §§2700 et seq.](#) [Prob C §1460\(d\)](#).

The court for good cause may dispense with the notice otherwise required to be given to a person. [Prob C §1460\(e\)](#). See [§§300.24–300.25](#).

4. [\[§300.24\]](#) Dispensing With Notice

If a person entitled to notice cannot be located after diligent search, the court may prescribe the manner of giving notice to that person or may dispense with notice to that person. [Cal Rules of Ct 7.52\(c\)](#).

Petitioner must file a declaration describing efforts made to locate a person entitled to notice, but whose address is unknown, before the court will prescribe an alternative form of notice or dispense with notice. The declaration must state ([Cal Rules of Ct 7.52\(a\)](#)):

- The name of the person whose address is unknown,
- The last known address of the person,
- The approximate date when the person was last known to reside there,
- The efforts made to locate the person, and
- Any facts that explain why the person's address cannot be obtained.
- The declaration must include a description of the attempts to learn of the person's business and residence addresses by ([Cal Rules of Ct 7.52\(a\)](#)):
- Inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding;
- Review of appropriate city telephone directories and directory assistance; and
- Search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside.

The form of order is Order Dispensing With Notice, Judicial Council Form GC-021.

5. [§300.25] Waiver of Notice

A person, conservator, trustee, or other fiduciary may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. [Prob C §1204](#).

- ☛ **JUDICIAL TIP:** An issue may arise as to competency required to execute a waiver of notice. It can be argued that a person who is incompetent does not have the capacity to waive notice. On the other hand, serving notice on an incompetent person may have no more effect than having them execute a waiver.

6. [§300.26] Special Notice

At any time after the issuance of letters of conservatorship, the conservatee, the spouse or registered domestic partner of the conservatee, any relative or creditor of the conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice. [Prob C §2700\(a\)](#).

The request for special notice must be so entitled and must set forth the name of the person and the address to which notices must be sent. [Prob C §2700\(b\)](#). The required form is Request for Special Notice, Judicial Council Form GC-35.

Special notice may be requested of any one or more of the following matters ([Prob C §2700\(c\)](#)):

- Petitions filed in the conservatorship proceeding;
- Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals;
- Accounts of the conservator; and
- Proceedings for the final termination of the conservatorship proceeding.
- Special notice may be requested of ([Prob C §2700\(d\)](#)):
- Any one or more of the matters in [Prob C §2700\(c\)](#) by describing the matter or matters,
- All the matters in [Prob C §2700\(c\)](#) by referring generally to “the matters described in subdivision (c) of Section 2700 of the Probate Code” or by using words of similar meaning.

A copy of the request must be personally delivered or mailed to the conservator or to the attorney for the conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received. [Prob C §2700\(e\)](#).

When the original of the request is filed with the court clerk, it must be accompanied by a written admission or proof of service. [Prob C §2700\(f\)](#).

A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request. [Prob C §2701\(a\)](#).

A new request for special notice may be served and filed at any time as provided in the case of an initial request. [Prob C §2701\(b\)](#).

Unless the court makes an order dispensing with the notice, if a request has been made for special notice of a hearing, the person filing the petition, account, or other paper must give written notice of the filing, together with a copy of the petition, account, or other paper, and the time and place set for the hearing, by mail to the person named in the request at the address set forth in the request, at least 15 days before the time set for the hearing. [Prob C §2702\(a\)](#). Special notice must be given under this chapter even though the provision under which the petition is filed permits ex parte petitions. Cal L Rev Comment to [Prob C §2700](#) (1990).

If a request has been made pursuant for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper must be mailed not later than 15 days after the inventory and appraisal or other paper is filed with the court. [Prob C §2702\(b\)](#).

D. Investigator and Attorney

1. [§300.27] Appointment and Duties of Investigator

An investigator must be appointed. The required form is Order Appointing Court Investigator, Judicial Council Form GC-330. Local practice varies as to how the investigator is appointed.

The court investigator must do all of the following ([Prob C §1826](#)):

- Interview the proposed conservatee personally;
- Interview the petitioner and the proposed conservator, if different from the petitioner;
- Interview the proposed conservatee's spouse or registered domestic partner and relatives within the first degree. If the proposed conservatee does not have any, then, to the greatest extent possible, the proposed conservatee's relatives within the second degree;
- To the greatest extent practical and taking into account the proposed conservatee's wishes, interview the proposed conservatee's relatives within the second degree not required to be interviewed under bullet 3, neighbors, and, if known, close friends;
- Inform the proposed conservatee of:

- The contents of the citation;
- The nature, purpose, and effect of the proceeding; and
- The right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if he or she is unable to retain legal counsel;
- Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing;
- Review the allegations of the petition as to why the appointment of the conservator is required and, in making the determination, do the following:
 - Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in [Prob C §1821\(a\)](#);
 - Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits [Prob C §811\(a\)](#) that significantly impair the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in [Prob C §1801\(a\), \(b\)](#), and identify the observations that support that belief. ~~§§300.34–300.38.~~
- Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship;
- Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator;
- Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain;
- Determine whether the proposed conservatee is capable of completing an affidavit of voter registration; and
- If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel:
 - Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to

protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

At least 5 days before the hearing, the investigator must report to the court in writing, concerning all the items in the bullet list just above, including the proposed conservatee's express communications concerning both of the following ([Prob C §1826\(k\)](#)):

- Representation by legal counsel; and
- Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.

At least 5 days before the hearing, the investigator must mail a copy of the report to all of the following ([Prob C §1826\(l\)](#)):

- The attorney, if any, for the petitioner;
- The attorney, if any, for the proposed conservatee;
- The proposed conservatee;
- The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, unless the court determines that the mailing will result in harm to the conservatee; and
- Any other persons as the court orders.

The investigator has discretion to release the report to the public conservator, interested public agencies, and the long-term care ombudsman. [Prob C §1826\(m\)](#).

The report required is confidential and may be made available only to parties or persons described to whom it must be mailed, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court must provide for the limitation of the report exclusively to persons entitled to its receipt. [Prob C §1826\(n\)](#).

This report requirement does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing. [Prob C §1826\(o\)](#).

If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court

may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed. [Prob C §1826\(p\)](#).

Any investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator must make a second visit to the proposed conservatee, and the report required by this section must include the effect of the temporary conservatorship on the proposed conservatee. [Prob C §1826\(q\)](#).

Each court must assess each conservatee in the county for any investigation or review conducted by a court investigator with respect to that person. The court may order reimbursement to the court for the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on the conservatee or the conservatee's estate. There is a rebuttable presumption that the assessment would impose a hardship if the conservatee is receiving Medi-Cal benefits. [Prob C §1851.5](#).

2. [§300.28] Appointment of Counsel

The court may appoint private legal counsel for a conservatee or a proposed conservatee if the court determines that the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests. [Prob C §1470\(a\)](#).

If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, the court must appoint the public defender or private counsel to represent the interest of such person in the following proceedings ([Prob C §1471\(a\)](#)):

- A proceeding to establish a conservatorship or to appoint a proposed conservator,
- A proceeding to terminate the conservatorship,
- A proceeding to remove the conservator,
- A proceeding for a court order affecting the legal capacity of the conservatee, and
- A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

The appointment must be made at or before the hearing, and whether or not such person lacks or appears to lack legal capacity. [Prob C §1471\(a\)](#).

If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, the court must appoint the public defender or private counsel to represent the interests of such person if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. The appointment must be made at or before the hearing and whether or not such person lacks or appears to lack legal capacity. [Prob C §1471\(b\)](#). In a case in which the conservator was proposing to withhold life support, the court was required to appoint counsel to represent the conservatee to represent his interests. The conservatee's inability to communicate was not a reason to deny counsel. *Wendland v Superior Court* (1996) 49 CA4th 44, 52, 56 CR2d 595, reversed on other grounds sub nom *Conservatorship of Wendland* (2001) 26 C4th 519, 110 CR2d 412.

The court must appoint counsel when the proposed conservator is the spouse of the proposed conservatee and is a party to an action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage, or has obtained a judgment in any of these proceedings. [Prob C §1813\(b\)](#). The court must appoint counsel when the proposed conservator is the registered domestic partner of the proposed conservatee and has terminated or is intending to terminate the domestic partnership. [Prob C §1813.1\(b\)](#).

The court must appoint counsel if the petitioner is requesting that the proposed conservatee be placed in a secured perimeter residential care facility for the elderly under [Health & S C §1569.698](#) or authorize the administration of medications appropriate for the care and treatment of dementia. [Prob C §2356.5\(f\)\(1\)](#).

E. Conservator

1. [§300.29] Preferences for Conservator

If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. [Prob C §1810](#). There is no requirement that the writing containing the nomination be executed in the same manner as a witnessed will. The only formal requirements are that the nomination be in writing and be signed by the proposed conservatee. Cal L Rev Comment to [Prob C §1810](#) (1990).

The court must appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee. [Prob C §1810](#); *Conservatorship of Ramirez* (2001) 90 CA4th 390, 401–403, 108 CR2d 581 (abuse of discretion not to appoint

conservatee's nominee son when it was clearly in her emotional and financial best interests to do so).

The spouse, registered domestic partner, or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing. [Prob C §1811\(a\)](#).

The spouse, registered domestic partner, or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed, and that nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse, domestic partner, or parent. [Prob C §1811\(b\)](#).

Subject to [Prob C §§1810](#) (conservatee's nominee) and [1813](#) (spouse and domestic partner termination), the selection of a conservator of the person or estate, or both, is solely in the discretion of the court, and in making the selection, the court is to be guided by what appears to be in the best interests of the proposed conservatee. [Prob C §1812\(a\)](#).

Subject to [Prob C §§1810](#) (conservatee's nominee) and [1813](#) (spouse and domestic partner termination), of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order ([Prob C §1812\(b\)](#)):

- The spouse or domestic partner of the proposed conservatee or the person nominated by the spouse or domestic partner pursuant to [Prob C §1811](#).
- An adult child of the proposed conservatee or the person nominated by the child pursuant to [Prob C §1811](#).
- A parent of the proposed conservatee or the person nominated by the parent pursuant to [Prob C §1811](#).
- A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to [Prob C §1811](#).
- Any other person or entity eligible for appointment as a conservator under this code or, if there is no person or entity willing to act as a conservator, under the Welfare and Institutions Code.

The preference for any nominee for appointment of an adult child, parent, brother, or sister is subordinate to the preference for any other parent, child, brother, or sister in that class. [Prob C §1812\(c\)](#).

2. [§300.30] Effect of Spouse or Domestic Partner Termination Proceedings

The spouse of a proposed conservatee may not petition for the appointment of a conservator for a spouse or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds,

that the spouse is not a party to any action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage. However, if the court finds by clear and convincing evidence that the appointment of such a spouse is in the best interests of the proposed conservatee, the court may appoint the spouse. Before making this appointment, the court must appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the spouse as conservator. [Prob C §1813\(a\)](#).

The registered domestic partner of a proposed conservatee may not petition for the appointment of a conservator for a domestic partner or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the domestic partner has not terminated and is not intending to terminate the domestic partnership as provided in [Fam C §299](#). However, if the court finds by clear and convincing evidence that the appointment of a domestic partner who has terminated or is intending to terminate the domestic partnership is in the best interests of the proposed conservatee, the court may appoint the domestic partner. [Prob C §1813.1\(a\)\(1\)](#). Before making this appointment, the court must appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the domestic partner as conservator. [Prob C §1813.1\(a\)\(2\)](#).

“Domestic partner” means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to [Fam C §297](#), provided that the domestic partnership has not been terminated. [Prob C §37\(a\)](#).

3. [§300.31] Private Professional Conservator Requirements

The court may not appoint a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless he or she holds a valid, unexpired, and unsuspended license as a professional fiduciary under [Bus & P C §§6500 et seq](#); is exempt from the definition of “professional fiduciary” under [Bus & P C §6501](#) (trust companies, FDIC insured institutions, public agencies, and certain others); or is exempt from the licensing requirements of [Bus & P C §6530](#) (CPAs, attorneys, and persons enrolled as an agent to practice before the Internal Revenue Service). [Prob C §2340](#).

The forms for filing the required information are Judicial Council Forms GC-005 and GC-006.

4. [§300.32] Joint Conservators

The court, in its discretion, may appoint for a conservatee ([Prob C §2105\(a\)](#)):

- Two or more joint conservators of the person,
- Two or more joint conservators of the estate, or
- Two or more joint conservators of the person and estate.

When joint guardians or conservators are appointed, each must qualify in the same manner as a sole guardian or conservator. [Prob C §2105\(b\)](#).

When there are two guardians or conservators, both must concur to exercise a power. When there are more than two guardians or conservators, a majority must concur to exercise a power. [Prob C §2105\(c\)](#).

If one of the joint guardians or conservators dies or is removed or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court. [Prob C §2105\(d\)](#).

When joint guardians or conservators have been appointed and one or more are:

- absent from the state and unable to act,
- otherwise unable to act, or
- legally disqualified from serving,

the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order. [Prob C §2105\(e\)](#).

If joint conservators are appointed, the court may order that separate bonds, or a joint bond, or a combination thereof be furnished. [Prob C §2326\(a\)](#).

5. [§300.33] One Conservator for Several Conservatees

The court, in its discretion, may appoint one conservator for several conservatees. [Prob C §2106\(a\)](#).

The appointment of one conservator for several conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard with respect to the newly proposed conservatee in the same manner as an initial petition for appointment of a conservator. [Prob C §2106\(b\)](#).

F. Capacity Determination

1. [§300.34] General Statutory Bases for Capacity Determinations

A conservator of the person may be appointed for an adult who cannot care properly for his or her own daily personal needs for such basics as food, clothing, health care, and shelter. [Prob C §1801\(a\)](#). A conservator may be appointed for the estate of an adult who is substantially unable to manage his or her own financial resources or who may be a prey to fraud or unable to resist undue influence. Substantial inability to manage finances may not be proven by isolated incidents of negligence or poor judgment. [Prob C §1801\(b\)](#).

A conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment. [Prob C §1802](#).

2. [§300.35] Guidelines: General Principles

The Legislature has provided guidelines for making capacity determinations in the [Due Process Competence Determinations Act](#). [Prob C §§810 et seq.](#) The Legislature found and declared the following ([Prob C §810](#)):

- There is a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.
- A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.
- A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

3. [§300.36] Guidelines: Unsound Mind, Lack of Capacity

A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, must be supported by evidence of a deficit in at least one of the following mental functions

and evidence of a correlation between the deficit or deficits and the decision or acts in question ([Prob C §811\(a\)](#)):

- Alertness and attention, including, but not limited to, the following:
 - Level of arousal or consciousness.
 - Orientation to time, place, person, and situation.
 - Ability to attend and concentrate.
- Information processing, including, but not limited to, the following:
 - Short- and long-term memory, including immediate recall.
 - Ability to understand or communicate with others, either verbally or otherwise.
 - Recognition of familiar objects and familiar persons.
 - Ability to understand and appreciate quantities.
 - Ability to reason using abstract concepts.
 - Ability to plan, organize, and carry out actions in one's own rational self-interest.
 - Ability to reason logically.
- Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
 - Severely disorganized thinking
 - Hallucinations
 - Delusions
 - Uncontrollable, repetitive, or intrusive thoughts
- Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, or apathy or indifference that is inappropriate in degree to the individual's circumstances.

Judicial Council Form GC-335, 6, Capacity Declaration—Conservatorship, provides information about these functions.

A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question. [Prob C §811\(b\)](#). In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take

into consideration the frequency, severity, and duration of periods of impairment. [Prob C §811\(c\)](#). The mere diagnosis of a mental or physical disorder is not sufficient alone to support a determination that a person is of unsound mind or lacks the capacity to do a certain act. [Prob C §811\(d\)](#).

4. [§300.37] Guidelines: Lack of Capacity To Make Decision

Except where otherwise provided by law, including, but not limited to, [Prob C §813](#) ([§300.38](#)) and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following ([Prob C §812](#)):

- The rights, duties, and responsibilities created by, or affected by the decision;
- The probable consequences for the decision maker and, where appropriate, the persons affected by the decision; and
- The significant risks, benefits, and reasonable alternatives involved in the decision.

5. [§300.38] Guidelines: Capacity To Give Informed Consent

For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following ([Prob C §813\(a\)](#)):

- Respond knowingly and intelligently to queries about that medical treatment;
- Participate in that treatment decision by means of a rational thought process; and
- Understand all of the following items of minimum basic medical treatment information with respect to that treatment:
 - The nature and seriousness of the person’s illness, disorder, or defect.
 - The nature of the medical treatment that is being recommended by the person’s health care providers.
 - The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person’s health care providers, and the consequences of lack of treatment.
 - The nature, risks, and benefits of any reasonable alternatives.

A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment. [Prob C §813\(b\)](#).

Judicial Council Form GC-335, 7, Capacity Declaration—Conservatorship, provides information about the capacity to give informed consent.

G. Hearing

1. [§300.39] Procedure and Jury Trial

The court hears and determines the matter of establishing a conservatorship according to the law and procedure relating to the trial of civil actions. There is a right to trial by jury if demanded by the proposed conservatee. [Prob C §1827](#). Because the right to a jury trial is statutory, not constitutional, the right may be waived by counsel, and a personal waiver is not required. *Conservatorship of Mary K.* (1991) 234 CA3d 265, 271, 285 CR 618.

The right to jury trial only extends to establishing the conservatorship, not to who should be the conservator or what orders should be made. Cal L Rev Comment to [Prob C §1827](#) (1990).

2. [§300.40] Standard of Proof

The standard of proof for the appointment of a conservator is clear and convincing evidence. [Prob C §1801\(e\)](#).

3. [§300.41] Discovery

Because general civil procedure is applicable ([Prob C §1827](#)), discovery is available as in any other civil action. This could include a mental examination of the proposed conservatee. [CCP §2032.020](#).

4. [§300.42] Conservatee's Attendance at Hearing

The proposed conservatee must be produced at the hearing except in the following cases ([Prob C §1825\(a\)](#)):

- When the proposed conservatee is out of the state when served and is not the petitioner.
- When the proposed conservatee is unable to attend the hearing by reason of medical inability.
- When the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefer that

another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

In the context of an LPS conservatorship, the California Supreme Court held that the conservatee's due process rights were not violated when the conservatee's nonattendance at the hearing was based on his appointed counsel's representation at the hearing that the conservatee had stated to counsel that the conservatee did not want to attend the hearing. *In re Conservatorship of Person of John L.* (2010) 48 C4th 131, 150–155, 105 CR3d 424.

If the proposed conservatee is unable to attend the hearing because of medical inability, such inability must be established:

- By the affidavit or certificate of a licensed medical practitioner, or
- If the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner.

The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and may not be considered in determining the issue of need for the establishment of a conservatorship. [Prob C §1825\(b\)](#). The affidavit must be in Judicial Council Form GC-335.

Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. [Prob C §1825\(c\)](#).

If the conservator fails to appear after having been served with citation and without having consented to the appointment, the court can have the investigator contact him or her or issue a bench warrant. Appointment of counsel may also be warranted if the proposed conservatee refuses to consent and refuses to attend. See [§300.28](#).

5. [[§300.43](#)] Information To Be Given to Proposed Conservatee

Before establishing a conservatorship of the person or estate, or both, the court must inform the proposed conservatee of all of the following ([Prob C §1828\(a\)](#)):

- The nature and purpose of the proceeding;
- Establishing a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations

requested in the petition, and the effect of such an adjudication on the conservatee's basic rights;

- The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration;
- The identity of the proposed conservator;
- The nature and effect on the conservatee's basic rights of any order requested under [Prob C §1870 et seq \(§§300.70–300.75\)](#), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order; and
- The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

After the court so informs the proposed conservatee and before establishing the conservatorship, the court must consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following ([Prob C §1828\(b\)](#)):

- Establishing the conservatorship;
- Appointing the proposed conservator; and
- Any order requested under [Prob C §§1870 et seq \(§§300.70–300.75\)](#), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

These requirements are not applicable when both of the following conditions are satisfied ([Prob C §1828\(c\)](#)):

- The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of [Prob C §1825\(a\) \(§300.42\)](#); and
- A showing of medical inability has been made, if that is the basis for not requiring attendance.

6. [§300.44] Appearance and Objections

Any of the following persons may appear at the hearing to support or oppose the petition ([Prob C §1829](#)):

- The proposed conservatee,
- The spouse or registered domestic partner of the proposed conservatee,
- A relative of the proposed conservatee, or
- Any interested person or friend of the proposed conservatee.

Written objections may be filed before the hearing, and written and oral objections may be made at the hearing. [Prob C §1043\(a\), \(b\)](#). If an oral objection is made at the hearing, the court in its discretion may either hear and determine the response or objection at the hearing, or grant a continuance for the purpose of allowing a response or objection to be made in writing. [Prob C §1043\(b\)](#).

7. [§300.45] Consent of Conservator

If the proposed conservator is not the proposed conservatee, the proposed conservator must consent to the appointment. The consent may be in person or in a filed writing.

8. [§300.46] Evidence

Because general civil procedure is applicable, ([Prob C §1827](#)), the Evidence Code is applicable, and hearsay is objectionable unless an exception is applicable. [Evid C §§1200 et seq.](#)

There is no patient-physician privilege in a proceeding to commit the patient or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition. [Evid C §1004](#). There is no patient-psychotherapist privilege in a proceeding brought by or on behalf of the patient to establish his or her competence. [Evid C §1025](#).

9. [§300.47] Order Appointing

The order appointing the conservator must contain, among other things, the names, addresses, and telephone numbers of ([Prob C §1830\(a\)](#)):

- The conservator.
- The conservatee’s attorney, if any.
- The court investigator, if any.

The required form is Judicial Council Form GC-340, Order Appointing Probate Conservator. An information notice of the rights of conservatees must be attached to the order. See Judicial Council Forms GC-341 and GC-341(MA), Notice of Conservatee’s Rights, and Attachment.

The conservator must mail the order and the attached information notice to the conservatee and the conservatee’s relatives, as set forth in [Prob C §1821\(b\)](#). [Prob C §1830\(c\)](#); see [§300.21](#).

10. [§300.48] Costs and Attorneys' Fees

The court may in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. [Prob C §1002](#).

If counsel is appointed under the court's discretionary power to appoint ([§300.28](#)), the court must order that fees be paid from the estate. [Prob C §1470](#). If the conservatee or proposed conservatee is unable to retain legal counsel, requests the appointment of counsel, and counsel is appointed, the court must order that fees be paid, but the court may determine that the conservatee or proposed conservatee lacks the ability to pay all or a portion the attorneys' fees, and the county must pay the fees to the private counsel to the extent the court determines that the person is unable to pay. [Prob C §1472](#).

An unsuccessful petitioner or his or her attorney may petition for payment of fees to be paid from the estate. [Prob C §2640.1](#).

H. Oath, Bond, and Letters

1. [§300.49] Oath

Before the appointment of a conservator is effective, the conservator must take an oath to perform the duties of the office according to law, which oath is attached to or endorsed upon the letters. [Prob C §2300](#).

The oath is in the form of Letters of Conservatorship, Judicial Council Form GC-350.

2. [§300.50] Bond

Every person appointed as conservator of the estate must, before letters are issued, give a bond approved by the court. [Prob C §§2300, 2320\(a\)](#). A conservator of the person need not give a bond unless so required by the court. [Prob C §2322](#).

The bond is for the benefit of the conservatee and all persons interested in the conservatorship estate and must be conditioned upon the faithful execution of the duties of the office, according to law, by conservator. [Prob C §2320\(b\)](#).

Unless the court increases or decreases the amount upon a showing of good cause, the amount of a bond given by a surety insurer must be the sum of all of the following ([Prob C §2320\(c\)](#)):

- The value of the personal property of the estate.
- The probable annual gross income of all of the property of the estate.
- The sum of the probable annual gross payments from the following:

- Public assistance under [Welf & I C §11000](#), foster children payments under [Welf & I C §16000](#), or assistance under [Welf & I C §17000](#).
- Federal aged, blind, or disabled under [42 USC §1382](#).
- Any other public entitlements of the conservatee.
- A reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs.

The bond does not include the value of real property until the property is sold or used as security for a loan, in which case the bond must be increased to cover the proceeds. [Prob C §2330](#).

A bond may not be required for a small estate where the following conditions exist ([Prob C §§2323\(a\), 2628\(a\)](#)):

- The estate consists of property, exclusive of the residence of the conservatee, of a total net value of less than \$7500;
- The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than \$1000; or
- All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

If it appears at any time that the estate does not satisfy these conditions, the court must require the filing of a bond unless the court determines that good cause exists, as provided in [Prob C §2321](#). [Prob C §2323\(b\)](#).

If funds are deposited in blocked accounts with the condition that the property, including any earnings thereon, will not be withdrawn except on authorization of the court, the court may exclude the property deposited in determining the amount of the required bond or reduce the amount of the bond to be required in respect to the property deposited to such an amount as the court determines is reasonable. [Prob C §2328\(a\)](#).

If the bond is given by personal sureties, the amount of the bond must be twice the amount required for a bond given by an admitted surety insurer. [Prob C §2320\(d\)](#).

The Bond and Undertaking Law, [CCP §§995.010 et seq.](#), applies to a conservator's bond. [Prob C §2320\(e\)](#).

The court may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination that must include a determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding. [Prob C §2321\(a\)](#).

In a conservatorship proceeding, when the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its

discretion may permit the filing of a bond in an amount less than would otherwise be required. [Prob C §2321\(b\)](#).

3. [§300.51] Letters

Before letters are issued, the conservator (other than a trust company or a public conservator) must file an acknowledgment of receipt of ([Prob C §1834\(a\)](#))

- A statement of duties and liabilities of the office of conservator, and
- A copy of the conservatorship information required under [Prob C §1835](#).

The acknowledgment and the statement form is Judicial Council Form GC-348, Duties of Conservator and Acknowledgment of Receipt of Handbook.

The appointment, the taking of the oath, and the filing of the bond, if required, must thereafter be evidenced by the issuance of letters by the clerk of the court. [Prob C §2310\(a\)](#). The form of letters of conservatorship is Judicial Council Form GC-350.

4. [§300.52] Information to Conservators

The court must provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities. [Prob C §1835\(a\)](#).

The information to be provided must include, but need not be limited to, the following ([Prob C §1835\(b\)](#)):

- The rights, duties, limitations, and responsibilities of a conservator.
- The rights of a conservatee.
- How to assess the needs of the conservatee.
- How to use community-based services to meet the needs of the conservatee.
- How to ensure that the conservatee is provided with the least restrictive possible environment.
- The court procedures and processes relevant to conservatorships.
- The procedures for inventory and appraisal, and the filing of accounts.

The failure of any court or any employee or agent thereof, to provide required information to a conservator does not ([Prob C §1835\(d\)](#)):

- Relieve the conservator of any of the conservator's duties as required by this division.

- Make the court or the employee or agent thereof, liable, in either a personal or official capacity, for damages to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

5. [§300.53] Recording

A conservator of the estate must record a certified copy of the letters with the county recorder's office in each county in which the conservatee owns an interest in real property, including a security interest. The conservator must record the letters as soon as practicable after they are issued, but no later than 90 days after the conservator is appointed. A temporary conservator of the estate may record the letters if the conservator deems it appropriate. [Prob C §2313](#).

I. Temporary Conservators

1. [§300.54] Petition for Appointment of Temporary Conservator

On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file a petition for appointment of a temporary conservator of the person or estate or both. [Prob C §2250\(a\)](#).

The petition must state facts that establish good cause for appointment of the temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the conservator. [Prob C §2250\(b\)](#).

The required form is Petition for Appointment of Temporary Guardian or Conservator, Judicial Council Form GC-110.

Private Professional Conservator. If the petitioner is a private professional conservator, the petition must include both of the following ([Prob C §2250\(c\)](#)):

- Statement of petitioner's license information; and
- Statement explaining who engaged petitioner or how petitioner was engaged to file the petition for appointment of a temporary conservator and what prior relationship petitioner had with the proposed conservatee or his or her family or friends. If that information is included in a petition for appointment of a general conservator filed at the same time by the same person, then it does not have to be duplicated in the petition for a temporary conservator.

Due Diligence. Unless the petition is filed by the proposed conservatee, it must include a declaration of due diligence showing both of the following ([Prob C §2250\(d\)](#)):

- Either the efforts to find the proposed conservatee’s relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them; and
- Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

2. [[§300.55](#)] Notice

Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing must be personally delivered to the proposed conservatee, and notice of the hearing must be served on the persons required to be named in the petition for appointment of conservator. A copy of the petition for temporary appointment must be served with the notice of hearing. [Prob C §2250\(e\)](#).

Good cause for an exception to the notice required must be based on a showing that the exception is necessary to protect the proposed conservatee or his or her estate from immediate and substantial harm. [Cal Rules of Ct 7.1062\(b\)](#).

An exception to the notice requirement may include one or any combination of the following ([Cal Rules of Ct 7.1062\(c\)](#)):

- Waiving notice to one, more than one, or all persons entitled to notice;
- Requiring a different period of notice; and
- Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or personal delivery, or a combination of these methods, instead of or in addition to notice by mail to the proposed conservatee’s spouse or registered domestic partner and relatives.

Good cause for an exception to the notice requirement may include a showing of ([Cal Rules of Ct 7.1062\(d\)](#)):

- Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the conservatee or the conservatee’s estate that could occur during the notice period.
- Harm that one or more persons entitled to notice might do to the proposed conservatee or the proposed conservatee’s estate if notice is given. Such a showing would not support an exception to the

requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.

- Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary conservator is appointed and (2) cannot be deferred for the notice period because of the proposed conservatee's pain or extreme discomfort or a significant risk of harm.
- Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed conservatee's estate during the notice period.

A request for a good cause exception to the notice requirement must be in writing, separate from the petition for appointment of a temporary conservator, and must include ([Cal Rules of Ct 7.1062\(e\)](#)):

- An application containing the case caption and stating the relief requested;
- An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;
- A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under [Cal Rules of Ct 3.1204\(b\)](#);
- A memorandum; and
- A proposed order.

3. [§300.56] Suspension or Vacancy

If the court suspends powers of the conservator under [Prob C §2334](#) or [§2654](#) or under any other provision, the court may appoint a temporary conservator to exercise those powers until the powers are restored to the conservator or a new conservator is appointed. [Prob C §2250\(i\)](#).

If for any reason a vacancy occurs in the office of conservator, the court by petition or on its own motion may appoint a temporary conservator to exercise the powers of the conservator until a new conservator is appointed. [Prob C §2250\(j\)](#).

4. [§300.57] Hearing

If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the

court must set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship must be given at least 10 days before the hearing. If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court must set the hearing at the same time that the hearing on the general petition is set. [Prob C §2250\(f\)](#).

Ex parte appointment of a temporary conservator does not offend the concept of due process of law. *O'Brien v Dudenhoeffer* (1990) 16 CA4th 327, 335, 19 CR2d 826.

5. [§300.58] Conservatee's Attendance at Hearing

The proposed temporary conservatee must attend the hearing except in the following cases ([Prob C §2250.4](#)):

- If the proposed temporary conservatee is out of the state when served and is not the petitioner.
- If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.
- If the court investigator has visited the proposed conservatee before the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:
 - The proposed conservatee is not willing to attend the hearing.
 - The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.
 - The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.
- If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and that holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

6. [§300.59] Duties of Investigator

Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator must do all of the following before the hearing, unless it is not feasible to do so, in which case the court investigator must do all of the following except the inquiry about attending the hearing within two court days after the hearing ([Prob C §2250.6\(a\), \(b\)](#)):

- Interview the proposed conservatee personally;
- Interview the petitioner and the proposed conservator, if different from the petitioner;
- To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends;
- To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in [Prob C §1821\(b\)](#);
- Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the temporary conservatorship, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel;
- Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing;
- Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship;
- Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator; and
- Report to the court, in writing, concerning all of the foregoing.

If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator must report this information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in [Prob C §§1470 et seq.](#) [Prob C §2250.6\(c\)](#).

If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator must immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion. [Prob C §2250.6\(d\)](#).

7. [§300.60] Order and Letters

The required form is Order Appointing Temporary Guardian or Conservator, Judicial Council Form GC-140. The bond requirement is

applicable to temporary conservators of the estate. [Prob C §§2300, 2320\(a\), 2322](#); [§300.50](#).

A temporary conservator must be issued letters of temporary conservatorship upon taking the oath and filing the bond as in the case of a conservator. The letters must indicate the termination date of the temporary appointment. [Prob C §2251](#).

The required form is Letters of Temporary Guardianship or Conservatorship, Judicial Council Form GC-150.

J. Successor Conservator

1. [[§300.61](#)] When Successor Appointed

When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator. [Prob C §2680](#).

2. [[§300.62](#)] Petition

A petition for appointment of a successor conservator may be filed by any of the following ([Prob C §2681](#)):

- The conservatee,
- The spouse or registered domestic partner of the conservatee,
- A relative of the conservatee,
- Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state, or
- Any other interested person or friend of the conservatee.

The petition must request that a successor conservator be appointed for the person or estate, or both, and must specify the name and address of the proposed successor conservator and the name and address of the conservatee. [Prob C §2682\(a\)](#). The petition must state whether the conservatee will be present at the hearing. [Prob C §2682\(f\)](#). The required form of petition is Judicial Council Form GC-310, the same form as is used for the original petition.

3. [[§300.63](#)] Notice

At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing must be given as provided below. The notice must be accompanied by a copy of the petition. [Prob C §2683\(a\)](#).

The notice of hearing must be mailed to each of the following persons ([Prob C §§1460, 2683\(b\)](#)):

- The relatives named in the petition;

- The conservator;
- The conservatee;
- The spouse of the conservatee, if the conservatee has a spouse, or the registered domestic partner of the conservatee, if the conservatee has a registered domestic partner; and
- Any person who has requested special notice of the matter.

If notice is required by [Prob C §1461](#) to be given to the Director of Mental Health or the Director of Developmental Services, notice must be mailed as so required. [Prob C §2683\(c\)](#).

If notice is required by [Prob C §1461.5](#) to be given to the Veterans Administration, notice must be mailed as so required. [Prob C §2683\(d\)](#).

4. [§300.64] Duties of Court Investigator

Unless the petition states that the conservatee will be present at the hearing, the court investigator must do all of the following ([Prob C §2684](#)):

- Interview the conservatee personally;
- Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel;
- Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed;
- If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel;
- Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court;
- Report to the court in writing, at least 5 days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal coun-

sel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed; and

- Mail, at least 5 days before the hearing, a copy of the report to all of the following:
 - The attorney, if any, for the petitioner.
 - The attorney, if any, for the conservatee.
 - Such other persons as the court orders.

5. [§300.65] Absentee

If the conservatee is an “absentee” (Prob C §2689; see §300.8):

- The petition for appointment of a successor conservator must contain the matters required by Prob C §1841 (see §300.137) in addition to the matters required by Prob C §2682.
- Notice of the hearing must be given as provided by Prob C §1842 (see §300.138) in addition to the requirements of Prob C §2683, except that notice need not be given to the conservatee.
- An interview and report by the court investigator is not required.

6. [§300.66] Duties of the Court

If the conservatee is present at the hearing, before making an order appointing a successor conservator, the court must do all of the following (Prob C §2685):

- Inform the conservatee of the nature and purpose of the proceeding;
- Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel; and
- After the court so informs the conservatee, the court must consult the conservatee to determine the conservatee’s opinion concerning the question of who should be appointed as successor conservator.

7. [§300.67] If Conservatee Fails To Appear

If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court must continue the hearing and direct the court investigator to perform the duties set forth above. Prob C §2686.

8. [§300.68] Who May Appear

The conservatee, the spouse, the registered domestic partner, any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition. [Prob C §2687](#).

9. [§300.69] Court’s Determination and Order

The court determines the question of who should be appointed as successor conservator according to the provisions of [Prob C §§1810 et seq. Prob C §2688\(a\)](#); see [§300.29](#).

The order appointing the successor conservator must contain, among other things, the names, addresses, and telephone numbers of the successor conservator, the conservatee’s attorney, if any, and the court investigator, if any. [Prob C §2688\(b\)](#). The required form of order is Judicial Council Form GC-340, which is the same form as for the original appointment of the conservator.

K. Capacity to Bind or Obligate Conservatorship Estate

1. [§300.70] Incapacity of Conservatee

The appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate. [Prob C §1872\(a\)](#).

The lack of capacity may not be construed to deny a conservatee ([Prob C §1871](#)):

- The right to control an allowance provided under [Prob C §2421](#).
- The right to control wages or salary to the extent provided in [Prob C §2601](#).
- The right to make a will. Testamentary capacity is determined by a different standard, which depends on soundness of mind. ([Prob C §6100](#)). Cal L Rev Comment to [Prob C §1871](#) (1990).
- The right to enter into transactions to the extent reasonable to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in [Fam C §297](#).

Unless the context otherwise requires, “transaction” includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right. [Prob C §1870](#).

2. [§300.71] Community Property

If a spouse (which includes a registered domestic partner ([Fam C §297.5](#))) has a conservator of the estate, the spouse lacks legal capacity to ([Prob C §3012\(b\)](#)):

- Manage and control, including legal capacity to dispose of, community property;
- Join in or consent to a transaction involving community property.
- If one spouse has legal capacity and the other has a conservator of the estate ([Prob C §3051\(b\)](#)):
- The spouse who has legal capacity has the exclusive management and control of the community property including, subject to [Prob C §3071](#), the exclusive power to dispose of the community property; and
- The community property is not part of the conservatorship estate.

If both spouses have conservators of the estate, an undivided one-half interest in the community property is included in, and managed, controlled, and disposed of as a part of the conservatorship estate of each spouse. [Prob C §3051\(d\)](#).

3. [§300.72] Court Authorization for Conservator To Enter Into Transaction

In the order appointing the conservator or upon a petition, the court may, by order, authorize the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under [Prob C §1872](#) by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. [Prob C §1873\(a\)](#).

Unless the context otherwise requires, “transaction” includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right. [Prob C §1870](#).

In the order, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following ([Prob C §1873\(b\)](#)):

- A requirement that for specific types of transactions, or for all transactions authorized by the order, the conservatee obtain prior

approval of the transaction by the court or conservator before exercising the authority granted by the order; and

- A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

The court, in its discretion, may provide in the order that the order or specific provisions of the order terminate at a time specified in the order. The court may extend the termination time. [Prob C §1873\(c\)](#).

An authority order continues in effect until the earliest of the following times ([Prob C §1873\(d\)](#)):

- The time specified in the order, if any.
- The time the order is modified or revoked.
- The time the conservatorship of the estate is terminated.

An order may be modified or revoked upon petition filed by the conservator, conservatee, the spouse or registered domestic partner of the conservatee, or any relative or friend of the conservatee, or any interested person. Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#) and [§300.23](#). [Prob C §1873\(e\)](#).

4. [[§300.73](#)] Petition for Court Authorization

After a conservator has been appointed, a petition requesting authority for the petitioner to enter into a transaction may be filed by any of the following ([Prob C §1874\(a\)](#)):

- The conservator.
- The conservatee.
- The spouse, registered domestic partner, or any relative or friend of the conservatee.

15 days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#) and [§300.23](#). [Prob C §1874\(b\)](#).

5. [[§300.74](#)] Supplemental to General Legal Principles

The provisions relating to the legal capacity of a conservatee to bind or obligate the conservatorship estate, and the provisions of any order of the court broadening such capacity, do not displace but are supplemented by general principles of law and equity relating to transactions. The general principles include, but are not limited to, capacity to contract, joinder or consent requirements, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause. [Prob C §1876](#).

6. [§300.75] Bona Fide Purchaser of Real Property

A transaction that affects real property of the conservatorship estate, entered into by a person acting in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship, is not affected by the above provisions or any order made thereunder unless a notice of the establishment of the conservatorship or temporary conservatorship has been recorded before the transaction in the county in which the property is located. [Prob C §1875](#).

L. Independent Powers

1. [§300.76] Grant of Powers

The court may, in its discretion, make an order granting the conservator any one or more or all of the powers specified below if the court determines that, under the circumstances of the particular conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. The conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the conservatee could do if possessed of legal capacity. The exercise is subject to the requirements, conditions, or limitations as are specifically and expressly provided in the order granting the power or powers. [Prob C §2590\(a\)](#). A conservator does not have a power specified in [Prob C §2591](#) without court authorization or express statutory authority. [Prob C §2590\(b\)](#).

The powers are ([Prob C §2591](#)):

- The power to operate, for a period longer than 45 days, at the risk of the estate, a business, farm, or enterprise constituting an asset of the estate.
- The power to grant and take options.
- The power to sell, at public or private sale, real or personal property of the estate without confirmation of the court of the sale, other than the personal residence of a conservatee. Authority to sell property includes the authority to contract for the sale and fulfill the terms and conditions of the contract, including conveyance of the property. [Prob C §2591\(c\)\(3\)](#).
- The power to sell, at public or private sale, the personal residence of the conservatee as described in [Prob C §2591.5](#) without confirmation of the court of the sale. The power granted pursuant to this paragraph is subject to the requirements of [Prob C §§2352.5 and 2541](#). Benchguide 301.
- The power to create, by grant or otherwise, easements and servitudes.

- The power to borrow money and give security for the repayment thereof.
- The power to purchase real or personal property.
- The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.
- The power to let or lease property of the estate, or extend, renew, or modify a lease of real property, for which for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.
- The power to lend money on adequate security.
- The power to exchange property of the estate.
- The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.
- The power to commence and maintain an action for partition.
- The power to exercise stock rights and stock options.
- The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.
- The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.
- The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

The independent powers provisions permit the court to authorize an experienced and qualified conservator to exercise one or more powers without the need to petition for court authorization. In appropriate cases, use of the authority will save time and expense in managing the estate while preserving adequate safeguards through the requirement of accounting. 20 Cal L Comm'n Rep 1001 (1990).

In determining whether to make an independent powers order, the court must consider (Cal L Rev Comment to [Prob C §2590](#) (1990)):

- The circumstances of the case;
- The need to grant the power or powers;
- The qualifications of the conservator; and
- The expense of obtaining court authorization for each exercise of the power or powers requested if the petition were to be denied.

2. [§300.77] Sale of Personal Residence

Notwithstanding any independent powers provisions, a conservator seeking an order authorizing a sale of the conservatee's personal residence must demonstrate to the court that the terms of sale are in all respects in the best interests of the conservatee. The terms include the commissions to be paid from the estate. [Prob C §2591.5\(a\)](#).

A conservator authorized to sell the conservatee's personal residence must comply with the provisions of [Prob C §10309](#) concerning appraisal or new appraisal of the property for sale, and sale at a minimum offer price. Notwithstanding [Prob C §10309](#), if the last appraisal of the conservatee's personal residence was conducted more than six months before the proposed sale of the property, a new appraisal is required before the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year before the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property. [Prob C §2591.5\(b\)](#).

Within 15 days of the close of escrow, the conservator must serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice. The conservator also must file a copy of the final escrow statement, along with a proof of service, with the court. [Prob C §2591.5\(c\)](#).

The court may, for good cause, waive any of these requirements, except the requirements regarding appraisal times. [Prob C §2591.5\(d\)](#).

3. [§300.78] Petition

The conservator may petition for an order for independent powers. [Prob C §2592\(a\)](#).

The application for the order may be included in the petition for the appointment of the conservator. In such case, the notice of hearing on the petition must include a statement that the petition includes an application for the grant of one or more independent powers and must list the specific power or powers applied for. [Prob C §2592\(b\)](#).

If the application for the order is made by petition filed after the filing of the petition for the appointment of the conservator, 15 days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#) and [§300.23](#). [Prob C §2592\(c\)](#).

4. [§300.79] Withdrawal

The court, on its own motion or on petition of any interested person, may withdraw any or all of the independent powers previously granted or

may impose restrictions, conditions, and limitations on the exercise of such powers by the conservator. [Prob C §2593\(a\)](#).

Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#) and [§300.23](#). [Prob C §2593\(b\)](#).

5. [[§300.80](#)] Stated in Letters

When independent powers are granted, the letters of conservatorship must state the power or powers granted and the restrictions, conditions, or limitations, if any, prescribed in the order. [Prob C §2594\(a\)](#). When a power or powers are granted by a subsequent order, new letters must be issued. [Prob C §2594\(b\)](#).

If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters must be issued accordingly. [Prob C §2594\(c\)](#).

6. [[§300.81](#)] No Effect on Other Provisions

The grant of independent powers does not affect the right of the conservator to petition the court for instructions or confirmation under [Prob C §2403](#) (Benchguide 301) or to petition the court under other provisions, as to a particular transaction or matter, in the same manner as if the independent power or powers had not been granted. [Prob C §2595\(a\)](#).

When authority exists under other provisions of law, either general or specific, for the conservator to do any act or to enter into any transaction described above, the conservator may proceed under such other provisions of law and is not required to obtain independent powers authority. [Prob C §2595\(b\)](#).

M. Capacity To Make Medical Decisions

1. [[§300.82](#)] Order to Conservator Power To Make Medical Decisions

If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court must ([Prob C §1880](#)):

- Adjudge that the conservatee lacks the capacity to give informed consent for medical treatment; and
- By order give the conservator of the person the power to make health care decisions for the conservatee. See [Prob C §2355](#); see [§300.83](#). If such an order is made, the letters must include a statement that the conservator has the powers specified in [Prob C §2355](#).

2. [§300.83] Incapacity of Conservatee

A conservatee is deemed unable to give informed consent to any form of medical treatment if, for all medical treatments, the conservatee is unable to respond knowingly and intelligently to queries about medical treatment or is unable to participate in a treatment decision by means of a rational thought process. [Prob C §1881\(a\)](#).

To determine that a conservatee is unable to respond knowingly and intelligently to queries about his or her medical treatment or is unable to participate in treatment decisions by means of a rational thought process, a court must do both of the following ([Prob C §1881\(b\)](#)):

- Determine that, for all medical treatments, the conservatee is unable to understand at least one of the following items of minimum basic medical treatment information:
 - The nature and seriousness of any illness, disorder, or defect that the conservatee has or may develop.
 - The nature of any medical treatment that is being or may be recommended by the conservatee’s health care providers.
 - The probable degree and duration of any benefits and risks of any medical intervention that is being or may be recommended by the conservatee’s health care providers, and the consequences of lack of treatment.
 - The nature, risks, and benefits of any reasonable alternatives.
- Determine that one or more of the mental functions of the conservatee described in [Prob C §811\(a\)](#) ([§300.36](#)) is impaired and that there is a link between the deficit or deficits and the conservatee’s inability to give informed consent. This determination need not be made if the conservatee, after notice by the court of his or her right to object, does not object to the proposed finding of incapacity, or waives any objections. [Prob C §1881\(e\)](#). Such notice must have included at least an interview by a court investigator before the hearing on the petition. See [Prob C §1826](#).

A deficit in the mental functions listed in [Prob C §811\(a\)](#) may be considered only if the deficit by itself, or in combination with one or more other mental function deficits, significantly impairs the conservatee’s ability to understand the consequences of his or her decisions regarding medical care. [Prob C §1881\(c\)](#).

In determining whether a conservatee’s mental functioning is so severely impaired that the conservatee lacks the capacity to give informed consent to any form of medical treatment, the court may take into consideration the frequency, severity, and duration of periods of impairment. [Prob C §1881\(d\)](#).

3. [§300.84] Health Care Decisions Order

A health care decisions order of the court under [Prob C §1880](#) may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator, or may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided below. [Prob C §1890\(a\)](#).

No court order of incapacity, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure. The declaration must state that the proposed conservatee or the conservatee lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefore. [Prob C §1890\(c\)](#). The required capacity declaration form is Judicial Council Form GC-335. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician or psychologist to complete the capacity declaration. See [§300.20](#).

4. [§300.85] Incapacity Petition

A petition may be filed requesting that the court make a health care decisions order or that the court modify or revoke a health care decisions order. The petition must state facts showing that the order requested is appropriate. [Prob C §1891\(a\)](#).

The petition may be filed by any of the following ([Prob C §1891\(b\)](#)):

- The conservator.
- The conservatee.
- The spouse, registered domestic partner, or any relative or friend of the conservatee.

The petition must set forth, so far as they are known to the petitioner, the names and addresses of the spouse or registered domestic partner and of the relatives of the conservatee within the second degree. [Prob C §1891\(c\)](#). The required form is Judicial Council Form GC-380, Petition for Exclusive Authority to Give Consent for Medical Treatment.

Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#). [Prob C §1892](#); see [§300.23](#).

5. [§300.86] Conservatee's Attendance at the Hearing

The conservatee must be produced at the hearing except in the following cases ([Prob C §1893](#)):

- If the conservatee is out of state when served and is not the petitioner.
- If the conservatee is unable to attend the hearing by reason of medical inability established (1) by the affidavit or certificate of a licensed medical practitioner, or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The required capacity declaration form is Judicial Council Form GC-335. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration. See [§300.20](#).
- The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and may not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.
- If the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing.

If the petition alleges that the conservatee is not willing to attend the hearing or, upon receipt of an affidavit or certificate attesting to the medical inability of the conservatee to attend the hearing, the court investigator must do all of the following ([Prob C §1894](#)):

- Interview the conservatee personally.
- Inform the conservatee of the contents of the petition; of the nature, purpose, and effect of the proceeding; and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.
- Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.
- Determine whether the conservatee wishes to contest the petition.
- Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.

- If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.
- Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel,
- Report to the court in writing, at least 5 days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel, and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

6. [§300.87] Incapacity Hearing

There is no right to a jury trial on the incapacity petition. [Prob C §§825, 1452](#). There is a rebuttable presumption affecting the burden of proof that the conservatee has the capacity to make informed medical decisions. [Prob C §810\(a\)](#).

The conservatee, the spouse, the registered domestic partner, any relative, or any friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition. [Prob C §1895\(a\)](#).

Except when the conservatee is absent from the hearing and is not required to attend the hearing, the court must, before granting the petition, inform the conservatee of all of the following ([Prob C §1895\(b\)](#)):

- The nature and purpose of the proceeding.
- The nature and effect on the conservatee's basic rights of the order requested.
- The right of the conservatee to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

After the court informs the conservatee and before granting the petition, the court must consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition. [Prob C §1895\(c\)](#).

7. [§300.88] Order

If the court determines that the order requested in the petition is proper, the court must make the order. [Prob C §1896\(a\)](#). The court, in its discretion, may provide in the order that, unless extended by subsequent

order of the court, the order or specific provisions of the order terminate at a time specified in the order. [Prob C §1896\(b\)](#). The required form is Order Authorizing Conservator to Give Consent for Medical Treatment, Judicial Council Form GC-385.

An order of the court under [Prob C §1880](#) continues in effect until the earliest of the following times ([Prob C §1897](#)):

- The time specified in the order, if any.
- The time the order is modified or revoked.
- The time the conservatorship is terminated.

The letters of conservatorship must be modified to reflect the health care decisions order.

8. [§300.89] Modification or Revocation

A health care decisions order of the court may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided above. [Prob C §1898](#).

N. Dementia Placement and Treatment

1. [§300.90] Legislative Intent

With regard to dementia treatment, the Legislature declared its intent ([Prob C §2356.5\(b\)](#)):

- That people with dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders,” should have a conservatorship to serve their unique and special needs.
- That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.
- That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in the statute.

2. [§300.91] Placement

A conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to [Health & S C §1569.698](#) and that has a care plan that meets the require-

ments of [22 Cal Code Reg §87724](#), upon a court’s finding, by clear and convincing evidence, of all of the following ([Prob C §2356.5\(b\)](#)):

- The conservatee has dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders.”
- The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit (see [Prob C §811\(a\)](#)), and this deficit significantly impairs the person’s ability to understand and appreciate the consequences of his or her actions (see [Prob C §811\(b\)](#); [§300.35](#)).
- The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to below. See [§300.94](#).
- The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

3. [[§300.92](#)] Treatment

A conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court’s finding, by clear and convincing evidence, of all of the following ([Prob C §2356.5\(c\)](#)):

- The conservatee has dementia, as defined in the last published edition of the “Diagnostic and Statistical Manual of Mental Disorders.”
- The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit (see [Prob C §811\(a\)](#)), and this deficit or these deficits significantly impairs the person’s ability to understand and appreciate the consequences of his or her actions (see [Prob C §811\(b\)](#); [§300.94](#)).
- The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in [§300.95](#).

In the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment required by the conservator must be by an accredited practitioner of that religion in lieu of the administration of medications. [Prob C §2356.5\(d\)](#).

A conservatee who is to be placed in such a facility may not be placed in a mental health rehabilitation center as described in [Welf & I C](#)

§5675, or in an institution for mental disease as described in [Welf & I C §5900](#). [Prob C §2356.5\(e\)](#).

4. [§300.93] Petition for Authority

A petition for authority to act under this section is governed by [Prob C §2357](#) (see [§300.97](#)), except ([Prob C §2356.5\(f\)](#)):

- The conservatee must be represented by an attorney (see [Prob C §1471](#)).
- The conservatee must be produced at the hearing, unless excused (see [Prob C §1893](#)).
- The petition must be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist must have at least two years of experience in diagnosing dementia. The required forms are Judicial Council Forms GC-335 and GC-335A. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician, psychologist to complete the capacity declaration. See [§300.20](#).
- The petition may be filed by any of the persons designated in [Prob C §1891](#). See [§300.101](#).

5. [§300.94] Investigator and Attorney

If the conservator is authorized to place or treat the conservatee for dementia, the court investigator must investigate annually and report to the court every two years pursuant to [Prob C §§1850](#) and [1851](#). See Bench-guide 301. In addition to the other matters provided in [Prob C §1851](#), the conservatee must be specifically advised by the investigator that the conservatee has the right to object to the conservator's dementia powers, and the report must also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers, or the investigator determines that some change in the powers granted under this section is warranted, the court must provide a copy of the report to the attorney of record for the conservatee. [Prob C §2356.5\(g\)](#).

If no attorney has been appointed for the conservatee, one must be appointed pursuant to [Prob C §1470](#). [Prob C §2356.5\(g\)](#). The attorney must, within 30 days after receiving this report, do one of the following ([Prob C §2356.5\(g\)](#)):

- File a petition with the court regarding the status of the conservatee.

- File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

A petition to terminate authority granted under this section is governed by [Prob C §2359](#), [Prob C §2356.5\(h\)](#); see [§300.103](#).

6. [§300.95] Effect

Nothing in the dementia provisions must be construed to affect a conservatorship of the estate of a person who has dementia. [Prob C §2356.5\(i\)](#). Nor do the dementia provisions affect the laws that would otherwise apply in emergency situations. [Prob C §2356.5\(j\)](#).

The dementia provisions do not affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia. [Prob C §2356.5\(k\)](#).

O. Powers of Conservator of Person

1. [§300.96] Grant of Powers

The conservator of the person, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the conservatee. [Prob C §2351\(a\)](#). However, if the court determines that it is appropriate in the circumstances of a particular conservatee, it may, in its discretion, limit the powers and duties that the conservator would otherwise have by an order stating either of the following ([Prob C §2351\(b\)](#)):

- The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.
- The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have.

Thus, for example, the court has discretion to make an order allowing the conservatee to fix his or her own residence or to make decisions concerning his or her own education. Cal L Rev Comment to [Prob C §2351](#) (1990).

Such an order (1) may be included in the order appointing a conservator of the person, or (2) may be made, modified, or revoked upon a petition subsequently filed, 15 days' notice of the hearing on the petition having been given. [Prob C §2351\(c\)](#); see [Prob C §§1460 et seq](#); [§300.23](#).

The conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest

except upon authorization of the court. Before authorization from the court, the conservator must disclose his or her financial interest in the entity to the court in writing. [Prob C §2351\(d\)](#).

“Financial interest” means ([Prob C §2351\(d\)](#)):

- An ownership interest in a sole proprietorship, a partnership, or a closely held corporation;
- An ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation; or
- Being an officer or a director of a corporation.

By its terms, this prohibition only applies to conservators required to register with the Statewide Registry under [Prob C §§2850 et seq.](#) [Prob C §2351\(d\)](#). [Probate Code §§2850 et seq.](#) has been repealed, and professional fiduciaries are now required to be licensed under [Bus & P C §§6500 et seq.](#) See [§300.31](#).

2. [[§300.97](#)] Elder Abuse Action

If the conservatee has been subject to abuse, either physical or financial, the conservator may bring an action under the [Elder Abuse and Dependent Adult Civil Protection Act](#). [Welf & I C §§15610 et seq.](#) The action can be brought in the probate court or the civil court as discussed below.

The Act provides remedies for abuse to elders and dependent adults. Abuse is defined as ([Welf & I C §15610.07](#)):

- Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

“Elder” means any person residing in this state, 65 years of age or older. [Welf & I C §15610.27](#). “Dependent adult” means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age. [Welf & I C §15610.23\(a\)](#).

When it is proven by clear and convincing evidence that a defendant is liable for physical abuse ([Welf & I C §15610.63](#)), or neglect ([Welf & I C §15610.57](#)), and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law, the defendants may be liable

for pain and suffering, punitive damages, and attorneys' fees. [Welf & I C §15657](#).

The department of the Superior Court having jurisdiction over probate conservatorships has concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff before the initiation of the action for abuse. [Welf & I C §15657.3\(a\)](#). The department of the Superior Court having jurisdiction over probate conservatorships must not grant relief if the court determines that the matter should be determined in a civil action, but must instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief if the court determines that the civil action was filed for the purpose of delay. [Welf & I C §15657.3\(b\)](#). It is error to dismiss, rather than transfer, an elder abuse action brought in the probate court. *Conservatorship of Kayle* (2004) 134 CA4th 1, 7, 35 CR3d 671.

The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult. [Welf & I C §15657.3\(c\)](#). Upon petition, after the death of the elder or dependent adult, the right to maintain an action must be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate. [Welf & I C §15657.3\(d\)](#).

3. Residence

a. [§300.98] Establishing Residence

The conservator or proposed conservator may establish the residence of the conservatee or proposed conservatee at any place within California without the permission of the court. The conservator must select the least restrictive appropriate residence, as described in [Prob C §2352.5](#); ([§300.107](#)), that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee. [Prob C §2352\(b\), \(g\)](#).

b. [§300.99] Preference for Personal Residence

It is presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence. [Prob C §2352.5\(a\)](#)

Upon appointment, the conservator must determine the appropriate level of care for the conservatee. That determination must include an evaluation of the level of care existing at the time of commencement of

the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence. If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination must either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future. [Prob C §2352.5\(b\)](#). The determination made by the conservator must be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator. [Prob C §2352.5\(c\)](#).

The conservator must evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care. [Prob C §2352.5\(d\)](#).

c. [§300.100] Establishing Residence Out of State

If permission of the court is first obtained, a conservator may establish the residence of a conservatee at a place outside California. Notice of the hearing on the petition to establish the residence of the conservatee out of state, together with a copy of the petition, must be given in the manner required by [Prob C §1460\(a\)](#) to all persons entitled to notice under [Prob C §1511\(c\)](#) or [§1822\(b\)](#). [Prob C §2352\(c\)](#). See [§300.23](#).

The required form of petition and order are Judicial Council Forms GC-85, Petition to Fix Residence Outside the State of California, and GC-90, Order Fixing Residence Outside the State of California.

Such an order requires the conservator either to return the conservatee to California, or to cause a conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order. [Prob C §2352\(d\)](#).

d. [§300.101] Notice of Change of Residence

The conservator must file a notice of change of residence with the court within 30 days of the date of the change. In the notice of change of residence, the conservator must include a declaration stating that the ward's or conservatee's change of residence is consistent with the standard set forth in [§300.100](#). [Prob C §2352\(e\)\(1\)](#). The required form of notice is Judicial Council Form GC-80, Change of Residence Notice.

The conservator must mail a copy of the notice to all persons entitled to notice under [Prob C §1511\(b\)](#) or [§1822\(b\)](#) and must file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement in order to prevent harm to the conservatee. [Prob C §2352\(e\)\(2\)](#).

If the conservator proposes to remove the conservatee from his or her personal residence (except out of state), the conservator must mail a notice of the intention to change the residence of the conservatee to all persons entitled to notice under [Prob C §1511\(b\)](#) or [§1822\(b\)](#). In the absence of an emergency, that notice must be mailed at least 15 days before the proposed removal of the conservatee from his or her personal residence. If the notice is served less than 15 days before the proposed removal of the conservatee, the conservatee must set forth the basis for the emergency in the notice. The conservator must file proof of service of that notice with the court. [Prob C §2352\(e\)\(3\)](#).

These provisions do not apply if the court has made an order under [Prob C §2351](#) pursuant to which the conservatee retains the right to establish his or her own residence. [Prob C §2352\(f\)](#).

4. Medical Consent

a. [§300.102] Consent by Conservatee

If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to the medical treatment, but the consent of the conservator is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the consent of the conservator alone is not sufficient if the conservatee objects to the medical treatment. [Prob C §2354\(a\)](#).

Thus, if the conservatee consents to the medical treatment (which includes surgery), there is no restriction imposed on providing the medical treatment to the conservatee. Accordingly, medical personnel may safely rely on the conservatee's informed consent as long as the conservatee has not been adjudicated to lack capacity to give informed consent for medical treatment. If the medical practitioner is unwilling to rely on consent of the conservatee, the practitioner may also require consent of the conservator. If the medical practitioner is willing to rely on consent of the conservatee alone, a conservator who wishes to forestall the treatment must seek an adjudication under [Prob C §1880](#) ([§300.11](#)) that the conservatee lacks capacity to give informed consent for medical treatment. If the medical practitioner also requires consent of the conservator but the conservator refuses to consent, the conservatee or other interested person may petition the court for an order requiring the conservator to consent. See [Prob C §2357\(i\)](#); [§300.110](#). Consent of the conservator alone is sufficient consent for medical treatment if the conservatee does not object to the treatment. Accordingly, if the conservatee is in such condition that he or she is unable to give consent, consent of the conservator is sufficient because consent of the conservatee is not required—all that is required is that the conservatee not object. Cal L Rev Comment to [Prob C §2354](#) (1990).

The conservator may require the conservatee to receive medical treatment, whether or not the conservatee consents to the treatment, if a court order specifically authorizing the medical treatment has been obtained pursuant to [Prob C §2357](#). [Prob C §2354\(b\)](#).

b. [§300.103] Emergency

The conservator may consent to medical treatment to be performed upon the conservatee, and may require the conservatee to receive the medical treatment, in any case where the conservator determines in good faith based upon medical advice that the case is an emergency case in which the medical treatment is required because ([Prob C §2354\(c\)](#)):

- The treatment is required for the alleviation of severe pain; or
- The conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

In such a case, the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent. [Prob C §2354\(c\)](#).

c. [§300.104] Conservator's Authority To Make Decision If Conservatee Lacks Capacity

If the conservatee has been adjudicated to lack the capacity to make health care decisions, the conservator has the exclusive authority to make health care decisions for the conservatee that the conservator in good faith based on medical advice determines to be necessary. The determination as to lack of capacity is discussed in [§§300.82–300.89](#). The conservator must make health care decisions for the conservatee in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator must make the decision in accordance with the conservator's determination of the conservatee's best interest. In determining the conservatee's best interest, the conservator must consider the conservatee's personal values to the extent known to the conservator. The conservator may require the conservatee to receive the health care, whether or not the conservatee objects. In this case, the health care decision of the conservator alone is sufficient and no person is liable because the health care is administered to the conservatee without the conservatee's consent. [Prob C §2355\(a\)](#).

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition. [Prob C §4615](#). “Health care decision” means a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following ([Prob C §4617](#)):

- Selection and discharge of health care providers and institutions.

- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.
- Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

If before a conservatorship is established, the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator must be by an accredited practitioner of that religion. [Prob C §2355\(b\)](#).

Under [Prob C §2355](#), incapacitated patients retain the right to have appropriate medical decisions made on their behalf. An appropriate medical decision is one that is made in the patient's best interests, as opposed to the interests of the hospital, the physicians, the legal system, or someone else. California law gives persons a right to determine the scope of their own medical treatment; this right survives incompetence in the sense that incompetent patients retain the right to have appropriate decisions made on their behalf, and [Prob C §2355](#) delegates to conservators the right and duty to make such decisions. The necessary determinations are to be made by the conservator, in accordance with the statutory standard. Court control or intervention in this process is neither required by statute, nor desired by the courts. Cal L Rev Comment to [Prob C §2355](#) (1999).

When the conservatee is a persistently vegetative patient with a diagnosis establishing that further treatment offers no reasonable hope of returning the patient to cognitive life, the conservator has the right under [Prob C §2355](#) to decide to withhold artificial nutrition and hydration. The decision does not require court approval. *Conservatorship of Drabick* (1988) 200 CA3d 185, 204, 245 CR 840; see *Conservatorship of Morrison* (1988) 206 CA3d 304, 253 CR 530. *Drabick* was decided under an earlier version of [Prob C §2355](#), but the Cal L Rev Comm'n Comment to the amendment of [Prob C §2355](#) states that the amendment of [Prob C §2355](#) to include consideration of the conservatee's wishes was consistent with *Drabick*. Cal L Rev Comment to [Prob C §2355](#) (1999). However, the amendment to [Prob C §2355](#) means that the conservator's decision must be based on the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator.

d. [§300.105] Conservator's Authority Subject To Advance Health Care Directive

The conservator's health authority is subject to a valid and effective advance health care directive executed by the conservatee under [Prob C §§4600 et seq.](#) [Prob C §2356\(e\)](#). Unless the power of attorney for health care provides otherwise, the agent designated in the power of attorney who is known to the health care provider to be reasonably available and willing

to make health care decisions has priority over any other person in making health care decisions for the principal. [Prob C §4685](#). Thus, the designated agent's authority supersedes any authority of the conservator. However, the conservator of the person may petition the court to ([Prob C §§4765\(e\), 4766](#)):

- Determine whether an advance health care directive is in effect or has terminated.
- Determine whether the acts or proposed acts of an agent or surrogate are consistent with the patient's desires as expressed in an advance health care directive or otherwise made known to the court or, where the patient's desires are unknown or unclear, whether the acts or proposed acts of the agent or surrogate are in the patient's best interest.
- Declare that the authority of an agent or surrogate is terminated, upon a determination by the court that the agent or surrogate has made a health care decision for the patient that authorized anything illegal.

e. [§300.106] No Placement in Mental Health Treatment Facility

No conservatee may be placed in a mental health treatment facility under the conservatorship statutes against the will of the conservatee. Involuntary civil placement of a conservatee in a mental health treatment facility may be obtained only pursuant to [Welf & I C §§5150 et seq, 5350 et seq](#), the [Lanterman-Petris-Short Act](#). [Prob C §2356\(a\)](#). See California Judges Benchguide 120: *LPS Proceedings* (Cal CJER).

f. [§300.107] No Experimental Drugs or Convulsive Treatment

No experimental drug as defined in [Health & S C §111515](#) may be prescribed for or administered to a conservatee under the conservatorship statutory provisions. Such an experimental drug may be prescribed for or administered to a conservatee only as provided in [Health & S C §§111515 et seq. Prob C §2356\(b\)](#).

No convulsive treatment as defined in [Welf & I C §5325](#) may be performed on a conservatee under conservatorship statutory provisions. Convulsive treatment may be performed on a conservatee only as provided in [Welf & I C §§5325 et seq. Prob C §2356\(c\)](#).

g. [§300.108] Standard of Proof

The California Supreme Court has determined that, when the issue is whether to withdraw life support from a conscious conservatee, the stan-

dard of proof is clear and convincing evidence. This standard is applicable to both bases for such a decision in [Prob C §2355\(a\)](#), the conservatee's instructions and wishes and, if those are not clear, the best interests of the conservatee. The Supreme Court found that to interpret [Prob C §2355](#) to permit a conservator to withdraw artificial nutrition and hydration from a conscious conservatee based on a finding, by a mere preponderance of the evidence, that the conservatee would refuse treatment creates a serious risk that the law will be unconstitutionally applied in some cases, with grave injury to fundamental rights. Therefore, the Court applied the clear and convincing evidence standard to avoid the unconstitutional application. *Conservatorship of Wendland* (2001) 26 C4th 519, 543–548, 110 CR2d 412.

However, the clear and convincing evidence standard does not apply to the vast majority of health care decisions made by conservators under [Prob C §2355](#). Only the decision to withdraw life-sustaining treatment, because of its effect on a conscious conservatee's fundamental rights, justifies imposing that high standard of proof. Therefore, the clear and convincing standard only affects a narrow class of persons: conscious conservatees who have not left formal directions for health care and whose conservators propose to withhold life-sustaining treatment for the purpose of causing their conservatees' deaths. The standard is not applicable to permanently unconscious patients, including those who are comatose or in a persistent vegetative state (see *Conservatorship of Drabick* (1988) 200 CA3d 185, 204, 245 CR 840 and *Conservatorship of Morrison* (1988) 206 CA3d 304, 253 CR 530); persons who have left legally cognizable instructions for health care (see [Prob C §§4670, 4673, 4700](#)); persons who have designated agents or other surrogates for health care (see [Prob C §§4671, 4680, 4711](#)); or conservatees for whom conservators have made medical decisions other than those intended to bring about the death of a conscious conservatee. The usual preponderance of evidence standard is applicable to these other cases. *Conservatorship of Wendland*, *supra*, 26 C4th at 555.

5. Medical Treatment Not Otherwise Authorized

a. [§300.109] Petition To Authorize Medical Treatment

If the conservatee requires medical treatment for an existing or continuing medical condition that is not otherwise authorized to be performed upon the conservatee, and the conservatee is unable to give an informed consent to this medical treatment, the conservator (including a temporary conservator) may petition the court for an order authorizing the medical treatment and authorizing the conservator to consent on behalf of the conservatee to the medical treatment. [Prob C §2357\(a\)–\(b\)](#).

The petition must state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed ([Prob C §2357\(c\)](#)):

- The nature of the medical condition of the conservatee that requires treatment.
- The recommended course of medical treatment that is considered to be medically appropriate.
- The threat to the health of the conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.
- The predictable or probable outcome of the recommended course of treatment.
- The medically available alternatives, if any, to the course of treatment recommended.
- The efforts made to obtain an informed consent from the conservatee.
- The name and addresses, so far as they are known to the petitioner, of the persons specified in [Prob C §1821\(b\)](#) ([§300.21](#)) in a conservatorship proceeding.

b. [[§300.110](#)] Appointment of Attorney

Upon the filing of the petition, unless an attorney is already appointed, the court must appoint the public defender or private counsel under [Prob C §1471](#), to consult with and represent the conservatee at the hearing on the petition and, if that appointment is made, [Prob C §1472](#) (compensation) applies ([§300.28](#)). [Prob C §2357\(d\)](#).

c. [[§300.111](#)] Notice

Notice of the petition is given as follows ([Prob C §2357\(e\)](#)):

- Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition must be personally served on the conservatee, and on the attorney for the conservatee.
- Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition must be mailed to the following persons:
 - The spouse or registered domestic partner, if any, of the conservatee at the address stated in the petition.
 - The relatives named in the petition at their addresses stated in the petition.

d. [§300.112] Shorten or Waive Notice

For good cause, the court may shorten or waive the notice of the hearing. In determining the period of notice to be required, the court must take into account both of the following ([Prob C §2357\(f\)](#)):

- The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.
- The desirability, when the condition of the conservatee permits, of giving adequate notice to all interested persons.

Notwithstanding the notice requirements, the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the conservatee so stipulate and further stipulate that there remains no issue of fact to be determined. [Prob C §2357\(g\)](#).

e. [§300.113] Court's Determination

The court may make an order authorizing the recommended course of medical treatment of the conservatee and authorizing the conservator to consent on behalf of the conservatee to the recommended course of medical treatment for the conservatee if the court determines from the evidence all of the following ([Prob C §2357\(h\)](#)):

- The existing or continuing medical condition of the conservatee requires the recommended course of medical treatment.
- If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the conservatee.
- The conservatee is unable to give an informed consent to the recommended course of treatment.

f. [§300.114] Petition of Conservatee or Other Interested Person for Medical Treatment

Upon petition of the conservatee or other interested person, the court may order that the conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the conservatee. Notice of the hearing on the petition under this subdivision is given for the period and in the manner provided in [Prob C §1460](#). [Prob C §2357\(i\)](#); see [§300.23](#).

This provision covers the situation where the conservatee or an interested person believes the conservatee needs medical treatment that the conservator is unwilling or has failed to obtain. Cal L Rev Comment to [Prob C §2357](#) (1990).

6. [§300.115] Other Conditions and Obligations

When a conservator is appointed, the court may, with the consent of the conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the conservatee. Any such conditions must be included in the letters. The performance of such conditions is a part of the duties of the conservator for the faithful performance of which the conservator and the sureties on the bond are responsible. [Prob C §2358](#).

7. [§300.116] Authorization and Instruction of Conservator

Upon petition of the conservator or conservatee or other interested person, the court may authorize and instruct the conservator or approve and confirm the acts of the conservator. [Prob C §2359\(a\)](#).

Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#) and [§300.23](#). [Prob C §2359\(b\)](#).

8. [§300.117] Conservator of Person's Disclosure Requirement for Real Estate Transactions With Estate

When a conservator of the person petitions for the approval of a purchase, lease, or rental of real or personal property from the conservatee's estate, the conservator must provide a statement disclosing ([Prob C §2359\(c\)\(1\)](#)):

- The family or affiliate relationship between the conservator and the purchaser, lessee, or renter of the property; and
- The family or affiliate relationship between the conservator and any agent hired by the conservator.

"Family" means a person's spouse, registered domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person's spouse. "Affiliate" means an entity that is under the direct control, indirect control, or common control of the conservator. [Prob C §2359\(c\)\(2\)](#).

A violation of this disclosure requirement results in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the conservatee's estate because the property was sold or leased at less than fair market value must be deemed as charges against the conservator under the provisions of [Prob C §§2401.3](#) and [2401.5](#). See Benchguide 301. The court must assess a civil penalty equal to three times the charges against the conservator or other person in violation and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court must order the conservator or other person in violation to pay a fine of up to \$5000 for each violation. The fines and

penalties provided in this section are in addition to any other rights and remedies provided by law. [Prob C §2359\(c\)\(3\)](#).

P. Powers of Temporary Conservator

1. [§300.118] Necessary Powers

A temporary conservator has only those powers and duties of a conservator that are necessary to provide for the temporary care, maintenance, and support of the conservatee and that are necessary to conserve and protect the property of the conservatee from loss or injury. [Prob C §2252\(a\)](#).

Unless the court otherwise orders, a temporary conservator of the person has the powers and duties specified in [Prob C §2354](#) (medical treatment; see [§300.139](#)) and [Prob C §2252\(b\)\(2\)](#). A temporary conservator of the estate also has the power to marshal assets and establish accounts at financial institutions. [Prob C §2252\(b\)\(3\)](#).

The temporary conservator has any additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require. [Prob C §2252\(c\)](#). Those additional powers and duties may include relief granted pursuant to [Prob C §2580](#) (substituted judgment; see California Judges Benchguide 301) if this relief is not requested in a petition for the appointment of a temporary conservator but is requested in a separate petition. [Prob C §2252\(c\)](#).

The terms of any order dealing with the powers of a temporary conservator must be included in the letters of temporary guardianship or conservatorship. [Prob C §2252\(d\)](#).

2. [§300.119] Capacity To Contract

It has been held that the appointment of a temporary conservator was an adjudication that the conservatee lacked capacity to contract and specifically to make a gift of the conservatee's property. The court held that [Prob C §1872](#), which provides that the appointment of a conservator of the estate is an adjudication that the conservatee lacked capacity to contract, was applicable to temporary conservators. It found that the legislative history showed that [Prob C §1872](#) was applicable to temporary conservators. *O'Brien v Dudenhoeffer* (1990) 16 CA4th 327, 335, 19 CR2d 826. That conclusion has been questioned on the constitutional and statutory grounds that the proof and process requirements for appointment of a temporary conservator are much less than for a general conservator. A temporary conservator can be appointed ex parte without notice and a hearing. See California Conservatorship Practice, §6.35 (Cal CEB 2005).

3. [§300.120] Sale of Property Interests

A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court. This approval may be granted only if ([Prob C §2252\(e\)](#)):

- The conservatee has been served with notice of the hearing, the notice to be personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and
- The court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that the action is necessary to avert irreparable harm to the conservatee.

The temporary conservator is not permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding that the action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that ([Prob C §2252\(e\)](#)):

- The real property is vacant,
- It cannot reasonably be rented, and
- It is impossible or impractical to obtain fire or liability insurance on the property.

4. Changing Residence

a. [§300.121] Written Request Required

If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided before the commencement of the proceedings, that power must be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request is filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request must specify ([Prob C §2253\(a\)](#)):

- In particular the place to which the temporary conservator proposes to move the conservatee,
- The precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and
- Why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

This provision does not prevent a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal. [Prob C §2254\(c\)](#). Nor does the provision prevent a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care. [Prob C §2254\(d\)](#).

b. [§300.122] Duties of Investigator

Unless the court for good cause orders otherwise, the court investigator is to do all of the following before the hearing ([Prob C §2253\(b\)](#)):

- Interview the conservatee personally.
- Inform the conservatee of the nature, purpose, and effect of the request to fix residence and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.
- Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.
- Determine whether the conservatee wishes to oppose the request.
- Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.
- If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.
- Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.
- Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

c. [§300.123] Hearing

Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court must hold a hearing on the request. [Prob C §2253\(c\)](#).

The conservatee is to be present at the hearing except in the following cases ([Prob C §2253\(d\)](#)):

- When the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.
- When the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

If the conservatee is unable to attend the hearing because of medical inability, that inability must be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and is not to be considered in determining the issue of need for the establishment of a conservatorship. [Prob C §2253\(e\)](#). The required form of affidavit is Judicial Council Form GC-335. If the capacity declaration cannot be obtained without a court order, an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration may be obtained by using Judicial Council Forms GC-333 and GC-334 (see [§300.20](#)).

At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf. [Prob C §2253\(f\)](#).

d. [§300.124] Findings Required To Approve Removal

The court may approve the request to remove the conservatee from the previous place of residence only if the court finds that ([Prob C §2253\(g\)](#)):

- Change of residence is required to prevent irreparable harm to the conservatee, and

- No means less restrictive of the conservatee’s liberty will suffice to prevent that harm.

If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order must specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from California unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee’s physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony. [Prob C §2253\(g\)](#).

Subject to the requirement for court approval for sales of property (see Benchguide 301), the court must also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee’s previous place of residence. [Prob C §2253\(h\)](#).

e. [§300.125] Emergency Removal

Notwithstanding the requirement for court approval of sales of property, a temporary conservator may remove a temporary conservatee from the temporary conservatee’s place of residence without court authorization if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee’s place of residence is unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is required to ([Prob C §2254\(a\)](#)):

- Provide medical treatment needed to alleviate severe pain; or
- Diagnose or treat a medical condition that, if not immediately diagnosed and treated, will lead to serious disability or death.

No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator must file a written request pursuant to [Prob C §2253](#) (see [§300.135](#)) for authorization to fix the residence of the temporary conservatee at a place other than the temporary conservatee’s previous place of residence. [Prob C §2254\(b\)](#).

5. [§300.126] Termination of Powers

The powers of a temporary conservator terminate, except for the rendering of the account, at the earliest of the following times ([Prob C §2257\(a\)](#)):

- The time the temporary conservator acquires notice that a conservator is appointed and qualified.
- Thirty days after the appointment of the temporary conservator or such earlier time as the court may specify in the order of appointment.

With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary conservator be extended or shortened pending final determination by the court of the petition for appointment of a conservator or pending the final decision on appeal therefrom or for other cause. The order that extends the time for termination must fix the time when the powers of the temporary conservator terminate except for the rendering of the account. [Prob C §2257\(b\)](#).

A temporary conservator is subject to the general provisions governing the suspension, removal, resignation, and discharge of a conservator. [Prob C §2258](#); see Benchguide 301.

Q. Marriage

1. [[§300.127](#)] Right To Marry

The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry or to enter into a registered domestic partnership. [Prob C §1900](#). Whether the conservatee has capacity to marry is determined by the law that would be applicable if no conservatorship been established. Cal L Rev Comment to [Prob C §1900](#) (1990).

2. [[§300.128](#)] Court Determination

The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in [Fam C §§300 et seq.](#), or to enter into a registered domestic partnership, as provided in [Fam C §297](#), at the time the order is made. [Prob C §1901\(a\)](#).

A petition for an order regarding marriage may be filed by ([Prob C §1900\(b\)](#)):

- The conservator of the person or estate or both,
- The conservatee,
- Any relative or friend of the conservatee, or
- Any interested person.

Fifteen days' notice of the hearing must be given to the persons listed in [Prob C §1460\(b\)](#). [Prob C §1901\(c\)](#); see [§300.23](#).

R. [§300.129] Disqualification From Voting

If the court determines that the conservatee is not capable of completing an affidavit of voter registration in accordance with [Elec C §2150](#), the court must by order disqualify the conservatee from voting pursuant to [Elec C §2208 or §2209](#). [Prob C §1910](#).

S. [§300.130] Special Provisions When Proposed Conservatee Is Missing Person

A conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown. [Prob C §1804](#).

A conservator of the estate of a person who is missing and whose whereabouts is unknown must be appointed by the same procedure as for other conservators provided in [Prob C §§1820 et seq.](#) [Prob C §1845\(a\)](#). However, the appointment may not be made when the proposed conservatee is an absentee as defined in [Prob C §1403](#) (see [§300.8](#)). [Prob C §1845\(b\)](#). Under some circumstances, the court may decline to appoint a permanent conservator pending further developments, but may appoint a temporary conservator. Cal L Rev Comment to [Prob C §1846](#) (1990).

1. [§300.131] Contents of Petition

In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition must state all of the following ([Prob C §1846](#)):

- The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.
- The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.
- The last-known residence of the missing person.
- A description of any search or inquiry made concerning the whereabouts of the missing person.
- A description of the estate of the proposed conservatee that requires attention, supervision, and care.

A petition may be filed for a missing person regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing. [Prob C §1849.5\(a\)](#).

2. [§300.132] Notice

In addition to the persons and entities to whom notice of hearing is required under [Prob C §1822](#), if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the following is required ([Prob C §1847](#)):

- A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition must be mailed at least 15 days before the hearing to the proposed conservatee at the last-known address of the proposed conservatee.
- Notice of the time and place of the hearing must also be published pursuant to [Govt C §6061](#) in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last-known address is in this state. Unlike [Prob C §1842](#), which requires notice to be published in the county where the hearing will be held, this provision requires notice to be published in the county where the proposed conservatee was last known to reside if his or her last-known address is in this state. Publishing notice in this county is more likely to give actual notice to the proposed conservatee. If the last known address is not in California, [Prob C §1847](#) does not require publication of notice, but, in such a case, the court may require publication within or outside California. Cal L Rev Comment to [Prob C §1847](#) (1990).
- The court may require that further or additional notice of the hearing be given. See [Prob C §1202](#).

[Probate Code §1847](#) does not limit the authority of the court in determining the need for conservatorship to require that a search be made for the missing person before a conservator is appointed. Whether to require such a search and the type of search to be required is left to the court's discretion. In exercising this discretion, the court may consider all the circumstances, including the nature of the disappearance, the character and amount of the estate, and the circumstances of persons who have an interest in the proceeding. For example, the court may dispense with a search if the missing person's estate is nominal, there are dependents entitled to support, and the funds necessary for support would be significantly reduced by the cost of the search. In other cases, no purpose would be served by a court-ordered search, such as when the proposed conservatee is lost at sea. Cal L Rev Comment to [Prob C §1847](#) (1990).

3. [§300.133] Acts Not Required

In a proceeding to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required (Prob C §1848):

- Issuance of a citation to the proposed conservatee (see Prob C §1823).
- Service of a citation and petition (see Prob C §1824).
- Production of the proposed conservatee at the hearing (see Prob C §1825).
- Performance of the duties of the court investigator (see Prob C §1826).
- Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

4. [§300.134] Required Findings

A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following (Prob C §1849):

- The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.
- The proposed conservatee remains missing and his or her whereabouts remains unknown.
- The estate of the proposed conservatee requires attention, supervision, and care.

T. [§300.135] Special Provisions When Proposed Conservatee Is an Absentee

A conservator of the estate may be appointed for a person who is an absentee, as defined in Prob C §1403. Prob C §1803. See §300.8.

Except as otherwise provided below, a conservator for an absentee must be appointed by the same procedure as for other conservators provided in Prob C §§1820 et seq. Prob C §1840.

1. [§300.136] Contents of Petition

In addition to the other required contents of the petition, if the proposed conservatee is an absentee, the petition must (Prob C §1841):

- Set forth the last known military rank or grade and the social security account number of the proposed conservatee; and
- State whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation,

dissolution of marriage, annulment, or adjudication of nullity of their marriage.

2. [§300.137] Notice

In addition to the persons and entities to whom notice of hearing is required under [Prob C §1822](#), if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing must be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice must also be published pursuant to [Govt C §6061](#) in a newspaper of general circulation in the county in which the hearing will be held. [Prob C §1842](#).

No citation is required under [Prob C §1823](#) to the proposed conservatee if the proposed conservatee is an absentee. [Prob C §1843](#).

3. [§300.138] Proof of Status of Conservatee

An official written report or record complying with [Evid C §1283](#) that a proposed conservatee is an absentee must be received as evidence of that fact, and the court must not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record. [Prob C §1844\(a\)](#).

The inability of the proposed conservatee to attend the hearing is established by the official written report or record. [Prob C §1844\(b\)](#).

IV. [§300.139] SPOKEN FORM: CONSERVATEE'S RIGHTS

The purpose of this proceeding is to consider appointing a conservator for you based on *either* [your inability to care properly for your own daily personal needs for such basics as food, clothing, health care, and shelter, *or* [your substantial inability to manage your own financial resources or because you may be a prey to fraud or unable to resist undue influence *or both*].

[*If personal*] If appointed, the conservator will have the authority to make personal decisions for you and the duty to provide for your care. You will lose the right to make such decisions for yourself. [*If estate*] If appointed, the conservator will have the power to manage your property. You will lose the right to make your own financial decisions. You may also be disqualified from voting if you are adjudged not capable of completing an affidavit of voter registration.

[*If conservator of estate is sought*] If a conservator of your estate is appointed, it is an adjudication or finding that you lack the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.

[*If order under Prob C §1873 is sought*] However, the petition proposes to allow you to enter into the following transactions: [*transactions sought to be allowed and conditions thereon*].

Do you understand the purpose of the proceeding and do you have any questions?

You have certain rights at this proceeding. You have the right to oppose the proceeding. You have a right to a jury trial on the issue of your incompetency. You have the right to be represented by an attorney and to have an attorney appointed to represent you if you are unable to retain legal counsel. Do you understand these rights and do you have any questions about them?

[*If no attorney*] Do you want the court to consider appointing an attorney for you?

_____ was appointed as the investigator in this proceeding. Did you talk to him *or* her?

The petition proposes to appoint _____ as conservator of your [person *or* estate *or* person and estate].

Do you object to the appointment of a conservator?

Do you object to the appointment of _____? Would you prefer that someone else be appointed conservator?

Do you object to the entry of the orders allowing you to [*transactions sought to be allowed and conditions thereon under Prob C §1873*]?

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